CLERK'S COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 528

PACIFIC NATIONAL COMPANY, PETITIONER,

vs.

GALEN H. WELCH, FORMER COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 25, 1937.

CERTIORARI GRANTED DECEMBER 6, 1937.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

MELVIN D. WILSON, Esq.,
433 South Spring Street,
Los Angeles, California.

For Appellee:

PEIRSON M. HALL, Esq.,
United States Attorney,
Federal Building,

EUGENE HARPOLE,
Assistant United States Attorney,
939 South Broadway,
Los Angeles, California.

United States of America, ss:

To GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, and PEIRSON M. HALL, United States Attorney,— GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 23rd day of June, A. D. 1935, pursuant to Order Allowing Appeal filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause entitled "PACIFIC NATIONAL COMPANY, a corporation, v. GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California," No. 5827-M, wherein PACIFIC NATIONAL COMPANY, a corporation, is the Plaintiff and Appellant, and you are Defendant and Appellee, to show cause, if any there be, why the Judgment and Decree heretofore entered on April 5, 1935, in the said Order Allowing Appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable PAUL J. McCORMICK, United States District Judge for the Southern District of California, this 23rd day of May, A. D. 1935, and of the Independence of the United States, the one hundred and fifty-ninth.

Paul J. McCormick

U. S. District Judge for the Southern District of California.

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF SERVICE OF CITATION.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

Wilbur G. Smith, being sworn, says: That I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action; I served the CITATION in this action by personally delivering to and leaving with the following person, at the County of Los Angeles, on the date set opposite his name a true copy thereof, to-wit:

Peirson M. Hall, United States Attorney, by delivering to Hugh Dickson, Asst. U. S. Atty., Federal Bldg., Los Angeles, Calif on May 24, 1935 Counsel for defendant and appellee.

Wilbur G. Smith

Subscribed and sworn to before me this 24th day of May, 1935.

[Seal] Mildred K. Rogers
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed May 24, 1935 R. S. Zimmerman Clerk By L. Wayne Thomas, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COM-, PANY, a corporation,	
Plaintiff,	At Law No. 5827-M
vs.	AMENDED COMPLAINT TO RECOVER FEDERAL CORPORATE INCOME TAXES.
GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California,	
Defendant.	

After permission of the Court having first been obtained, Plaintiff files its Amended Complaint, and as a cause of action against the Defendant alleges:

I.

That the jurisdiction of this Court is dependent upon a Federal question in that the cause arises under the laws of the United States pertaining to Internal Revenue, to-wit: The Revenue Act of 1928.

II.

Plaintiff herein is, and during all the times hereinafter mentioned was, a corporation organized under the laws of the State of California, and has its principal office and place of business in the Pacific National Bank Building, 315 West Ninth Street, Los Angeles, California.

III.

That the Defendant, Galen H. Welch, was, from April 6, 1926 to June 30, 1933, the duly commissioned and acting Collector of Internal Revenue for the Sixth Collection District of California, pursuant to the laws of the United States, and during all the times hereinafter mentioned, resided, and still resides and has his office in the City of Los Angeles, County of Los Angeles, State of California.

IV.

That this action is brought against the Defendant as a former officer acting under and by virtue of the Revenue Act of 1928, in effect for the year 1928, on account of acts done under color of his office and of the Revenue laws of the United States, as will hereinafter more fully appear.

V.

That Plaintiff filed with the proper officer designated by Statute, its corporation income tax return for the calendar year 1928, as required by law, within the statutory period, to-wit: On or about the 14th day of March, 1929, and paid a tax to the Defendant of $10,761.28, as follows:

March 14, 1929—	$ 2,690.30
June 12, 1929—	2,690.30
September 11, 1929—	2,690.34
December 12, 1929—	2,690.34
Total—	$10,761.28

VI.

That thereafter, to-wit: On the 26th day of February, 1931, Plaintiff, in the time and manner provided by law and regulations for filing claims for refund, filed with the Defendant and with the Commissioner of Internal Revenue, its claim for the refund of said tax amounting to $10,761.28, a copy of which Claim is attached hereto and marked Exhibit "A".

VII.

That on or about the 17th day of May, 1932, the Commissioner of Internal Revenue rejected that portion of Plaintiff's Claim for Refund which pertained to the grounds set forth in this cause of action. The Commissioner allowed Plaintiff's Claim for Refund in the amount of $1,091.39, together with interest thereon, based on other grounds not material to this suit.

VIII.

During the year 1928, the Plaintiff was the sole beneficiary of Trust No. P. T. 46, Pacific National Bank, Trustee. This Trust was a subdivision Trust engaged in subdividing and improving a parcel of property and selling lots therefrom.

IX.

Trust No. P. T. 46, Pacific National Bank, Trustee, kept its books on the cash basis, except that gross profits from the sale of lots were computed on the installment basis, that is, on the basis of collections. On such basis the Trust had a loss, for 1928. The Pacific National Bank, Trustee of Trust No. P. T. 46, throughout 1928, did not file an income tax return covering the activities of the Trust for 1928.

X.

In its return for 1928 the Plaintiff erroneously reported the amount of $137,007.17 as being the income for 1928 of Trust No. P. T. 46, Pacific National Bank, Trustee.

XI.

That Plaintiff should not have reported anything in its 1928 return as income of Trust No. P. T. 46, Pacific National Bank, Trustee, on the basis on which the Trustee kept the accounts of the Trust.

XII.

That the Plaintiff, for the year 1928, had a net loss, before taking into consideration the loss of Trust No. P. T. 46, Pacific National Bank, Trustee, of $32,425.47.

XIII.

That if the loss of Trust No. P. T. 46, Pacific National Bank, Trustee, is reflected in Plaintiff's 1928 return, Plaintiff would still have a loss and would not be liable for any income tax for the year 1928, and is entitled to a refund and judgment for the tax erroneously paid, amounting to $9,669.89.

XIV.

Subsequent to March 15, 1929, the Bank of America National Trust & Savings Association succeeded the Pacific National Bank as Trustee of Trust No. P. T. 46. As successor Trustee, the Bank of America National Trust & Savings Association filed, with the Collector of Internal Revenue for the sixth Collection District of California, a Fiduciary return for the year 1928, for the said Trust, on the installment basis.

XV.

That the Defendant erroneously and unlawfully collected and is erroneously and unlawfully withholding in-

come tax for the year 1928, in the amount of $9,669.89, from the Plaintiff, and is indebted to the Plaintiff in the sum of $9,669.89, plus interest at 6 per cent per annum from March 14, 1929, on $2,690.30; and from June 12, 1929, on $2,690.30; and from September 11, 1929, on $2,690.34; and from December 12, 1929, on $1,598.95; and although often demanded the Defendant has not, nor has anyone for him, repaid or refunded said sum, or any part thereof; and that said claim for refund is the sole property of Plaintiff herein, and has not been sold, transferred, or assigned to any corporation, firm or individual.

FOR A FURTHER AND SECOND CAUSE OF ACTION AGAINST DEFENDANT, PLAINTIFF ALLEGES AS FOLLOWS:

I.

Plaintiff hereby refers to paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XII, XV of its first cause of action and by reference incorporates the same herein as though fully set out herein.

II.

That on June 11, 1931, Plaintiff, in the time and manner provided by law and regulations for filing claims for refund, filed with the Defendant and with the Commissioner of Internal Revenue, its Amended Claim for the refund of said tax amounting to $10,761.28. This Amended Claim was based on the proposition that Trust No. P. T. 46, Pacific National Bank, Trustee, was, during 1928, an association taxable as a corporation; that while it was a member of a consolidated group of corporations, the other corporations in the group, namely, Plaintiff and Pacific National Building Corporation, had

filed separate corporation income tax returns for 1928; that the association, Trust No. P. T. 46, should have filed a separate corporation income tax return; that it could not file a consolidated return with Plaintiff.

III.

That the Commissioner of Internal Revenue, in his Revenue Agent's Report dated June 16, 1931, considered the grounds set out in the Amended Claim referred to in the preceding paragraph.

IV.

Plaintiff, on July 27, 1931, and on September 11, 1931, supplemented its said Amended Claim for Refund.

V.

On August 25, 1931, Plaintiff's Amended Claim for Refund was considered in a conference between Plaintiff's Accountants and Conferees in the office of the Internal Revenue Agent in Charge, Los Angeles, California. The Conferees, on September 23, 1931, in a letter to Plaintiff, ruled that Trust No. P. T. 46 was not an association, and advised that the file would be forwarded to the Commissioner of Internal Revenue in Washington, D. C.

VI.

After some further correspondence between Plaintiff and the Commissioner of Internal Revenue at Washington, D. C., the Commissioner, on February 15, 1932, in a letter addressed to Plaintiff, ruled that Trust No. P. T. 46, was not an association, and therefore Plaintiff's claim would be denied for $9,669.89, and allowed for $1,091.39 on other points not material to this suit.

VII.

On April 1, 1932, Plaintiff's Attorneys had a conference with the Commissioner of Internal Revenue in Washington, D. C., on this Amended Claim for Refund.

VIII.

While the audit of the Amended Claim for Refund was still pending, Plaintiff, on April 4, 1932, filed its Amended Claim for Refund, a copy of which is attached hereto and marked Exhibit "B".

IX.

Trust No. P. T. 46 was an association taxable as a corporation for 1928, and should have filed a separate Federal corporate income tax return for that year.

X.

The income of Trust No. P. T. 46, Pacific National Bank, Trustee, for 1928, should be excluded from Plaintiff's return and gross income.

XI.

If the income of Trust No. P. T. 46, Pacific National Bank, Trustee, for 1928, is excluded from Plaintiff's return and gross income, Plaintiff will have a loss, on which no tax is or was due, and Plaintiff is entitled to a refund of $9,669.89.

WHEREFORE, Plaintiff prays for judgment against the Defendant, GALEN H. WELCH, in the amount of $9,669.89, for 1928, together with interest at 6 per cent per annum from March 14, 1929, on $2,690.30; from June 12, 1929, on $2,690.30; from September 11, 1929, on $2,690.34; and from December 12, 1929, on $1,598.95; together with Plaintiff's costs of suit.

MILLER, CHEVALIER, PEELER & WILSON

By Melvin D. Wilson
Counsel for Plaintiff.

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

E. C. MAEDER, being by me first duly sworn, deposes and says:

That he is the Secretary of Pacific National Company, a corporation, the Plaintiff in the above entitled action, and as such officer is duly authorized to sign the foregoing Amended Complaint; that he has read the foregoing Amended Complaint to Recover Federal Corporate Income Taxes and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

E. C. Maeder

Subscribed and sworn to before me this 18th day of February, 1935.

[Seal] Mary McWaters
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Dec. 1, 1935.

[For Exhibits "A" and "B" hereto attached see Stipulation of Facts incorporated in Engrossed Bill of Exceptions.]

[Endorsed]: Filed Feb. 19, 1935. R. S. Zimmerman Clerk By B. B. Hansen, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ANSWER TO AMENDED COMPLAINT.

Comes now the defendant above-named, by and through his Attorneys, Peirson M. Hall, United States Attorney for the Southern District of California, Hugh L. Dickson, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of United States Internal Revenue, and in answer to the Amended Complaint on file herein, admits, denies and alleges, to-wit:

I.

The allegations of paragraph I of the Amended Complaint are admitted.

II.

The allegations of paragraph II of the Amended Complaint are admitted.

III.

The allegations of paragraph III of the Amended Complaint are admitted.

IV.

The allegations of paragraph IV of the Amended Complaint are admitted.

V.

The allegations of paragraph V of the Amended Complaint are admitted.

VI.

The allegations of paragraph VI of the Amended Complaint are admitted.

VII.

The allegations of paragraph VII of the Amended Complaint are admitted.

VIII.

Answering the allegations of paragraph VIII of the Amended Complaint, defendant admits that during the year 1928, the plaintiff was the sole beneficiary of Trust No. P. T. 46, Pacific National Bank, Trustee. All other allegations in said paragraph VIII are denied.

IX.

Answering the allegations of paragraph IX of the Amended Complaint, defendant admits that Trust No. P. T. 46, Pacific National Bank, Trustee, kept its books on the cash basis. All other allegations of said paragraph are denied for lack of sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof.

X.

The allegations of paragraph X of the Amended Complaint are admitted except it is denied that plaintiff's action in reporting the net income of Trust No. P. T. 46, Pacific National Bank, Trustee, therein mentioned was erroneous.

XI.

The allegations of paragraph XI of the Amended Complaint are denied.

XII.

The allegations of paragraph XII of the Amended Complaint are denied.

XIII.

The allegations of paragraph XIII of the Amended Complaint are denied.

XIV.

The allegations of paragraph XIV of the Amended Complaint are denied as immaterial and in this connection it is alleged that the fiduciary return therein mentioned was filed January 3, 1935, and subsequent to the commencement of this action.

XV.

The allegations of paragraph XV of the Amended Complaint are denied except it is admitted that the defendant has not, nor has anyone for him repaid or refunded the sum or any part thereof involved in this action.

ANSWERING THE PLAINTIFF'S SECOND CAUSE OF ACTION:

I.

Defendant realleges as through here set forth, the answers given above to paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XII and XV.

II.

The allegations of paragraph II of the Second alleged Cause of Action are denied.

III.

The allegations of paragraph III of the Second alleged Cause of Action are denied except it is admitted that a Revenue Agent's report was made, dated June 16, 1931.

IV.

The allegations of paragraph IV of the Second alleged Cause of Action are denied.

V.

The allegations of paragraph V of the Second alleged Cause of Action are denied.

VI.

The allegations of paragraph VI of the Second alleged Cause of Action are denied except it is admitted that in a letter dated February 15, 1932, and addressed to the plaintiff, the Commissioner of Internal Revenue ruled that Trust No. P. T. 46, Pacific National Bank, Trustee, was not an association and that therefore Plaintiff's claim would be denied for $9,669.89 and allowed for $1,091.39.

VII.

Answering the allegations of paragraph VII of the Second alleged Cause of Action, defendant alleges that he has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof and therefore denies the same.

VIII.

Answering the allegations of paragraph VIII of the Second alleged Cause of Action, defendant alleges that he has not sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof and therefore denies the same.

IX.

The allegations of paragraph IX of the alleged Second Cause of Action of the Amended Complaint are denied.

X.

The allegations of paragraph X of the alleged Second Cause of Action of the Amended Complaint are denied.

XI.

Answering the allegations of paragraph XI of the alleged Second Cause of Action, defendant alleges that he does not have sufficient knowledge or information upon which to form a belief as to the truth or falsity thereof and therefore denies the same.

BY WAY OF FURTHER ANSWER AND AS HIS FIRST AFFIRMATIVE DEFENSE, THE DEFENDANT ALLEGES:

I.

That the plaintiff filed a corporate income tax return for the calendar year 1928, in which it reported income from Trust No. P. T. 46, Pacific National Bank, Trustee, on the closed transaction basis.

II.

That the plaintiff was, at the time of filing said return for the calendar year 1928, the sole beneficiary of said Trust, and that by its act of filing the return, it has elected to report the income of said Trust No. P. T. 46, Pacific National Bank, Trustee, upon the closed transaction basis.

BY WAY OF FURTHER ANSWER AND AS A SECOND AFFIRMATIVE DEFENSE, IT IS ALLEGED AS FOLLOWS:

I.

That plaintiff filed an additional claim for refund, a copy of which is hereto attached, marked Exhibit "A", and by reference made a part hereof, on April 4, 1932.

II.

That all of the tax sought to be recovered herein had been paid by the plaintiff to the defendant more than two years prior to April 4, 1932.

III.

That said claim for refund filed on April 4, 1932, requested the refund of the tax here involved, upon separate, new and distinct grounds from those set forth in its claim for refund filed on February 26, 1931.

IV.

That at the time of filing its claim for refund on April 4, 1932, plaintiff was barred, and its action outlawed by the Statute of Limitations applicable to the filing of claims for refund for the calendar year 1928.

WHEREFORE the defendant having fully answered the allegations of the Amended Complaint prays that he may have judgment against the plaintiff for his costs.

Dated: February 19, 1935.

Peirson M. Hall—E. H.
PEIRSON M. HALL, U. S. ATTORNEY,

Hugh L. Dickson – E. H.
HUGH L. DICKSON, ASST. U. S. ATTORNEY,

Eugene Harpole
EUGENE HARPOLE, SPECIAL ATTORNEY
U. S. BUREAU OF INTERNAL REVENUE

Counsel for Defendant.

EXHIBIT "A"

Form 843
Treasury Department
Internal Revenue Service
Revised June 1930

AMENDED CLAIM

To be Filed with the Collector where Assessment was Made or Tax Paid.

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

COLLECTOR'S STAMP

Date Received
REfund of Tax Illegally Collected. Apr 4 1932

Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

Abatement of Tax Assessed (not applicable to estate or income taxes).

RECEIVED
APR 26 1932
CLAIMS CONTROL
SECTION

STATE OF CALIFORNIA)ss
401062-1929 List
COUNTY OF LOS ANGELES)

2228256

Name of taxpayer or purchaser of stamps PACIFIC NATIONAL COMPANY,

Business address PACIFIC NATIONAL BANK BUILDING

(Street) (City)

Residence Los Angeles, California. 1928

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Sixth California.
2. Period (if for income tax, make separate form for each taxable year) from January 1 1928 to December 31, 1928.
3. Character of assessment or tax Corporation Income Tax
4. Amount of assessment, $10,761.28; dates of payment .....
5. Date stamps were purchased from the Government....
6. Amount to be refunded.....$ 10,761.28
7. Amount to be abated (not applicable to income or estate taxes).....
8. The time within which this claim may be legally filed expires, under Section 322 of the Revenue Act of 1928, on 12/121931 , 19

The deponent verily believes that this claim should be allowed for the following reasons:

On February 15, 1931, a claim for refund for $10,761.28, 1928 income tax was filed by claimant. The

Commissioner of Internal Revenue has not completed his examination of the claim, but it still considering it.

The ground for the original claim was that the income from a subdivision trust, of which claimant was the sole beneficiary, had been reported in claimant's return on the completed or accrual basis, while the correct method was the installment basis.

The Commissioner suggested that the claimant had elected to use the completed basis and was estopped from using the installment basis as grounds for a claim for refund.

Claimant now wishes to amend the claim by showing that the subdivision trust is a separate entity, an association taxable as a corporation, that it did not file a consolidated return with claimant in 1928, and that its 1928 income can not be included in claimant's income or return. Accordingly, the income of the subdivision trust must be excluded from claimant's 1928 income, and the tax paid thereon by claimant, refunded. This situation prevents the doctrine of estoppel from applying to this case.

(Signed) Pacific National Company
By Edgar F. Hughes,
Vice-president.

Sworn to and subscribed before
me this 1st day of April, 1932.
Norman C. Eckstein, Notary Public.
Signature of officer administering Oath
Title.

My Commission Expires Nov. 20, 1932.

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

EUGENE HARPOLE, being first duly sworn deposes and says: That he is a Special Attorney for the United State Bureau of Internal Revenue and one of the attorneys for the defendant in the foregoing action. that he is authorized to and does make this verification for and on behalf of the said defendant for the reason that he is more conversant with the facts involved than said defendant and for the reason that said Defendant is not now Collector of Internal Revenue and does not have access to the official records in said case; that he has read the foregoing Answer and knows the contents thereof and that the matters and facts therein contained are true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters he believes it to be true.

Eugene Harpole
Special Attorney,
Bureau of U. S. Internal Revenue.

Subscribed and sworn to before me
this 19 day of February, 1935.
[Seal] F. G. Albright
NOTARY PUBLIC.

NOTARY PUBLIC in and for the County of Los Angeles, State of California My Commission Expires Oct 22, 1936

[Endorsed]: Received copy this 19 day of Feb. 1935 Melvin D Wilson Counsel for Plaintiff Filed Feb. 19 1935. R. S. Zimmerman Clerk By B. B. Hansen, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION WAIVING JURY

We, the Attorneys for the respective parties, hereby waive the trial to the jury of this cause and agree to submit the same to the Court without the intervention of a jury.

DATED: December 27, 1933.

MILLER, CHEVALIER, PEELER & WILSON

By Melvin D. Wilson

Counsel for Plaintiff.

DATED: Dec. 30, 1933.

Peirson M. Hall

Peirson M. Hall, U. S. Attorney

John R. Layng, Asst. U. S. Attorney

Alva C. Baird

Alva C. Baird, Asst. U. S. Attorney

Counsel for Defendant.

APPROVED:

Wm. P. James

United States District Judge.

[Endorsed]: Filed Jan. 9, 1934. R. S. Zimmerman Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The above entitled case came on regularly for trial before the Court sitting without a jury, a jury having been waived in writing by the parties, Melvin D. Wilson appearing for the plaintiff, and Peirson M. Hall, United States Attorney for the Southern District of California, Hugh L. Dickson, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney for the United States Bureau of Internal Revenue appearing for the defendant, evidence, both oral and documentary, having been introduced and the Court having considered the evidence finds the following facts therefrom:

I.

That the cause arose under the laws of the United States pertaining to Internal Revenue, to-wit: the Revenue Act of 1928.

II.

That plaintiff herein is, and during all the times hereinafter mentioned was, a corporation organized under the Laws of the State of California, and has its principal office and place of business in the Pacific National Bank Building, 315 West Ninth Street, Los Angeles, California.

III.

That the Defendant, Galen H. Welch, was, from April 6, 1926, to June 30, 1933, the duly commissioned and

acting Collector of Internal Revenue for the Sixth Collection District of California, during all the times hereinafter mentioned, resided, and still resides, and has his office in the City of Los Angeles, County of Los Angeles, State of California.

IV.

That the plaintiff filed its corporation income tax return for the calendar year 1928 with the defendant on the 14th day of March, 1929.

V.

That the plaintiff prepared its 1928 income tax return from its books of account and upon the same basis upon which those books were kept.

VI.

That the corporate income tax return filed by plaintiff for the calendar year disclosed a tax of $10,761.28 to be due and said tax was paid to the defendant as follows:

March 14, 1929	$ 2,690.30
June 12, 1929	2,690.30
September 11, 1929	2,690.34
December 12, 1929	2,690.34

VII.

That during the entire calendar year of 1928, the plaintiff was the sole beneficiary of a trust known as P. T. No. 48, Pacific National Bank, Trustee, and the owner of over 80% of the capital stock of the said Pacific National Bank.

VIII.

The 1928 Federal Income Tax Return filed by Plaintiff reported an income of $89,677.34, and this income was made up as follows:

Income from Trust No. P. T. 46, Pacific National Bank, Trustee—		$137,007.17
Less:		
Loss of Plaintiff from its 1928 operations exclusive of the trust income	$11,480.37	
Statutory net losses of Plaintiff as follows:		
1925—	1,990.77	
1926—	9,708.66	
1927—	24,150.03	47,329.83
Net income as reported—		$ 89,677.34

The $137,007.17 representing the income of Trust No. P. T. 46, Pacific National Bank, Trustee, resulted from the sale of subdivision lots, and in the determination thereof said sales were treated as deferred payment sales not on the installment plan and the obligations of the purchaser were treated as having a fair market value equivalent to their face value.

IX.

Pacific National Bank, as Trustee of Trust No. P. T. 46, kept the books and records of the Trust on the cash receipts and disbursements basis. This Trustee did not

file a Fiduciary or other income tax return for the Trust for the years 1927 or 1928, nor did the successor Trustee do so prior to the institution of this action.

X.

That the plaintiff filed a claim for refund of the taxes paid for the calendar year 1928 on the 26th day of February, 1931, setting forth the following grounds for the allowance of the refund:

"The taxpayer is a California corporation, organized in 1925, and reported net losses and profits as follows: Year 1925, Net Loss—$1,990.77; 1926, Net Loss—$13,199.43; 1927, Net Loss—$24,150.03; 1928, Net Profit—$89,677.43; 1929, Net Loss—$59,091.70.

"In computing net profit for the year 1928 the taxpayer made the following errors:

"(1) No deduction was made for depreciation of buildings, equipment, etc.

"(2) No deduction was made for depletion of oil lease.

"(3) Profit from sales of real estate in a subdivision trust were erroneously reported as based on closed sales, although the sales were made on the installment basis and proceeds of sales and collections were allocated by the Trustee."

XI.

That the plaintiff filed a claim for refund of the taxes paid for the calendar year 1928 on the 4th day of April, 1932, setting forth the following grounds for the allowance of the refund:

"On February 15, 1931, a claim for refund of $10,761.28, 1928 income tax was filed by claimant. The

Commissioner of Internal Revenue has not completed his examination of the claim, but is still considering it.

"The ground for the original claim was that the income from a subdivision trust, of which claimant was the sole beneficiary, had been reported in claimant's return on the completed or accrual basis, while the correct method was the installment basis.

"The Commissioner suggested that the claimant had elected to use the completed basis and was estopped from using the installment basis as grounds for a claim for refund.

"Claimant now wishes to amend the claim by showing that the subdivision trust is a separate entity, an association taxable as a corporation, that it did not file a consolidated return with claimant in 1928, and that its 1928 income can not be included in claimant's income or return. Accordingly, the income of the subdivision trust must be excluded from claimant's 1928 income, and the tax paid thereon by claimant, refunded. This situation prevents the doctrine of estoppel from applying to this case."

XII.

On the 17th day of May, 1932, the Commissioner of Internal Revenue allowed Plaintiff's claim for refund filed February 26, 1931, to the extent of $1,091.39 (upon grounds not in issue here) and rejected it as to the balance.

XIII.

That the Commissioner of Internal Revenue on July 25, 1932, confirmed the rejection of May 17, 1932, of claims for refund of taxes for the year 1928, and in said ruling of July 25, 1932, said Commissioner considered

all claims for refunds that had been theretofore filed by plaintiff taxpayer.

XIV.

That the plaintiff filed no claims for refund of the tax involved in this action other than those filed February 26, 1931, and April 4, 1932.

XV.

The issue that Trust No. P. T. 46, Pacific National Bank, Trustee, was an association taxable as a corporation and not as a Trust was not presented to the Commissioner of Internal Revenue in any claim for refund filed prior to April 4, 1932, and this claim for refund was not filed within two years from the date of payment of any portion of the tax reported for the calendar year 1928.

XVI.

The plaintiff filed no claim for refund which presented the contention sought to be raised at the trial, that the obligations of the purchasers of lots from Trust No. P. T. 46, Pacific National Bank, Trustee, had a fair market value less than the equivalent of their face value.

XVII.

That the plaintiff employed one Frank J. Brick on or about the 24th day of October, 1927, to put on a sales campaign of subdivision lots included in the holdings of Trust No. P. T. 46, Pacific National Bank, Trustee; that with the knowledge, consent, acquiescence and approval of the plaintiff, said Frank J. Brick put on a very successful high pressure sales campaign wherein he employed the free lunch and lecture system. That plaintiff obtained and retained financial benefit and income from the sales made by said Brick.

CONCLUSIONS OF LAW

From the Stipulation of Facts filed herein February 19, 1935, and from the foregoing Findings of Fact, the Court concludes as a matter of law:

I.

That there is no substantial or sufficient evidence before the Court upon which to base a judgment for the Plaintiff.

II.

That for the calendar year 1928, the plaintiff filed a corporate income tax return that met the requirements of the Internal Revenue Act and the Regulations of the Treasury Department and that said return was compiled from and made on the basis upon which the plaintiff kept its books of account.

III.

That the plaintiff has not filed a claim for refund in compliance with the provisions of Sec. 3226 Revised Statutes as to the contention that the obligations of the lot purchasers had a fair market value less than the equivalent of their face value and is not entitled to rely upon that contention in this action.

IV.

That Trust No. P. T. 46, Pacific National Bank, Trustee, is a fixed trust in the nature of a mortgage, and being a security device and not an association taxable as a corporation, as the entity involved in Trust No. 5833 was determined to be by this Court in 50 Fed. (2d) 614, and by the Ninth Circuit Court of Appeals in 54 Fed. (2d) 323.

V.

That the claim for refund that was filed by Plaintiff taxpayer on April 4, 1932, is an amendment of a claim for refund that was seasonably filed by the plaintiff taxpayer on February 26, 1931, and that said claim for refund dated April 4, 1932, is not barred by any statute of limitations.

VI.

That the plaintiff by its action in filing an income tax return for the calendar year 1928, in which it reported the proceeds from the sale of lots from the subdivision trust held by Trust P. T. 46, Pacific National Bank, Trustee, upon the deferred payment plan rather than the installment plan, exercised an election as to the method of reporting said sales, which election became final and binding upon the expiration of the time for filing income tax returns for the calendar year 1928 by this plaintiff.

VII.

That the defendant is entitled to recover judgment from the plaintiff herein for his costs to be taxed.

Dated This 8th Day of March, 1935.

Paul J. McCormick
United States District Judge.

[Endorsed]: Filed Mar. 8, 1935 R. S. Zimmerman Clerk By B. B. Hansen, Deputy Clerk.

At a stated term, to wit: The February Term, A. D. 1935, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 8th day of March in the year of our Lord one thousand nine hundred and thirty-five

Present:

The Honorable Paul J. McCormick, District Judge.

PACIFIC NATIONAL COMPANY, a corporation,

Plaintiff, No. 5827-M

vs.

GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California,

Defendant.

Findings and judgment are ordered for defendant herein, together with his costs of suit

Findings of fact and conclusions of law proposed by the plaintiff are not adopted by the Court, and are ordered filed herein, and in lieu of such proposed findings, the Court has this day made and filed herein its findings of fact and conclusions of law. Exceptions noted and allowed to the plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COMPANY, a corporation,	)	
Plaintiff,	)	NO. 5827-M
vs.	)	JUDGMENT.
GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California,	)	
Defendant.	)	

The above entitled cause came on regularly for trial on the 19th day of February, 1935, before the Court sitting without a jury, a jury having been waived in writing by the parties, Melvin D. Wilson, Esq., appearing for the plaintiff, and Peirson M. Hall, United States Attorney for the Southern District of California, Hugh L. Dickson, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney for the United States Bureau of Internal Revenue appearing for the defendant; and evidence both oral and documentary having been introduced and the cause submitted for de-

cision, and the Court having heretofore made and caused to be filed herein its written Findings of Fact and Conclusions of Law;

IT IS ORDERED, ADJUDGED and DECREED that the plaintiff take nothing upon its complaint; that judgment be awarded against the plaintiff and in favor of the defendant herein for his costs to be taxed.

Approved as to Form as provided by Rule 44:

Melvin D. Wilson
Counsel for Plaintiff.

Judgment entered and recorded Apr. 5-1935 R. S. ZIMMERMAN Clerk By Murray E. Wire Deputy Clerk

[Endorsed]: Filed Apr. 5-1935 R. S. Zimmerman Clerk By Murray E. Wire, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION TO MINIMIZE PRINTED RECORD ON APPEAL

Pursuant to Rule 23 (8) of the United States Circuit Court of Appeals for the Ninth Circuit, the parties hereto, through their respective counsel, do hereby stipulate and agree that the printed transcript of record on appeal may be minimized as follows:

I.

Exhibit No. 1 in the Engrossed Bill of Exceptions is a copy of Plaintiff's 1928 Corporation Income Tax Return. As to this Exhibit, the printer may omit all parts of the return which were not filled out with Plaintiff's figures or answers; that is, the printer may print only such parts of the return as are not stricken out on the copy of the return attached hereto.

II.

Exhibit No. 2, in the Engrossed Bill of Exceptions, may be omitted and the following summary of that Exhibit may be printed in lieu thereof:

"Exhibit No. 2 is a written contract between Pacific National Company and Transamerica Corporation, dated December 23, 1931. In the contract Pacific National Company assigned to Bank of America National Trust and Savings Association various assets, including 29,188-14/100 shares of the capital stock of Transamerica Corporation, and the beneficial interest of Pacific National Company in the Trust S-1542, Title Guarantee and Trust Company, but excluding the claim of Pacific National Company for a refund of 1928 income taxes. In con-

sideration of said assignment, Transamerica Corporation released Pacific National Company from any further obligation or liability or guarantee which might exist under and by reason of an agreement between the parties dated July 17, 1929 and supplemental and extension agreements."

III.

Exhibit No. 11, in the Engrossed Bill of Exceptions, consists of two parts, a Fiduciary Return of Income for 1927 and a similar return for 1928. These returns may be called Parts I and II. Each Part consists of Form 1041, printed by the Treasury Department and a schedule of lot sales.

As to the printed Form 1041, the printer may omit all printed lines and language where the return is not filled out with figures or answers; that is, the printer may print only such parts of the return as are not stricken out on the copy of the return attached hereto.

As to the schedule of lot sales, the printer may leave out the part stricken out on the attached copies of the schedules. It is hereby stipulated that details as to each lot sold in 1927 and 1928, respectively, were given, as shown in the sample line on each schedule.

IV.

Exhibit "D", of the Stipulation of Facts, part of the Engrossed Bill of Exceptions, is a copy of the Declaration of Trust, Trust No. P. T. 46, Pacific National Bank, Trustee. This Exhibit may be minimized as follows:

The description of the property, contained on pages 1 to 7 inclusive, down to the paragraph on page 7, beginning "That no consideration has been paid by said Trustee . ." may be omitted by the printer.

V.

That in printing this Stipulation there may be omitted the Exhibits attached hereto for the purpose of giving instructions for the printer.

VI.

That if, in preparing the briefs or oral argument in this case, it develops that additional portions of the record should have been included in the printed transcript, the Defendant may supplement the record, or either party may transmit the original exhibits to the United States Circuit Court of Appeals.

DATED: July 26, 1935.

Melvin D. Wilson
MELVIN D. WILSON
Counsel for Plaintiff.

Peirson M. Hall – E. H.
Peirson M. Hall, U. S. Attorney
Hugh L. Dickson – E. H.
Hugh L. Dickson, Asst. U. S. Attorney
Eugene Harpole
Eugene Harpole, Special Attorney,
Bureau of Internal Revenue.
Counsel for Defendant.

APPROVED: July 30, 1935.

Paul J. McCormick
Judge of the United States
District Court.

[Endorsed]: Filed Jul 30, 1935. R. S. Zimmerman Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ENGROSSED BILL OF EXCEPTIONS

BE IT REMEMBERED that on the 19th day of February, 1935, the above entitled cause came on for trial before this Court, Honorable Paul J. McCormick presiding, the Court sitting without a Jury, trial by Jury having been waived in writing by counsel for the respective parties, a true copy of said Stipulation being as follows:

"IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COMPANY, a corporation, Plaintiff, vs. GALEN H. WELCH, Collector of Internal Revenue for the Sixth District of California, Defendant.	No. 5827-M STIPULATION WAIVING JURY

We, the Attorneys for the respective parties, hereby waive the trial to the jury of this cause and agree to sub-

mit the same to the Court without the intervention of a jury.

DATED: December 27, 1933.

MILLER, CHEVALIER, PEELER & WILSON
By Melvin D. Wilson
Counsel for Plaintiff.

DATED: Dec. 30, 1933.

PEIRSON M. HALL
Peirson M. Hall, U. S. Attorney
John R. Layng, Asst. U. S. Attorney
ALVA C. BAIRD
Alva C. Baird, Asst. U. S. Attorney
Counsel for Defendant.

APPROVED: January 9, 1934.
WM. P. JAMES
United States District Judge"

In the trial the following proceedings were had and the following testimony given:

Melvin D. Wilson, Esq., appearing for Plaintiff, and Peirson M. Hall, Esq., United States Attorney for the Southern District of California, Hugh Dickson, Esq., Assistant United States Attorney for said District, and Eugene Harpole, Esq., Special Attorney for the Bureau of Internal Revenue, appearing for the Defendant.

Mr. Melvin D. Wilson made an opening statement to the Court on behalf of the Plaintiff, and Mr. Eugene Harpole made an opening statement to the Court on behalf of the Defendant, whereupon Mr. Wilson replied to Mr. Harpole's statement, and thereupon the following proceedings were had, and evidence and testimony, oral and

documentary, were introduced in evidence on behalf of Plaintiff and on behalf of Defendant as follows:

The Plaintiff introduced an Amended Complaint. The Defendant objected to the filing of the Second Cause of Action in said Amended Complaint, on the ground that it was immaterial. The Court overruled the objection and allowed the Defendant an exception. The Defendant then filed an Answer to the Amended Complaint.

The Plaintiff introduced into evidence the following Stipulation as to certain facts which had been agreed to by the parties:

The Defendant objected to the introduction of Paragraphs VI, X, XV and XVIII of said Stipulation of Facts, upon the ground that they were immaterial and redundant.

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COMPANY, a corporation, Plaintiff, vs. GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, Defendant.	At Law No. 5827-M STIPULATION OF FACTS

IT IS HEREBY STIPULATED, by and between the respective parties hereto, through their respective counsel,

that the following facts are true, and, subject to all objections as to their relevancy or materiality, may be received into evidence, with the right reserved to either party to offer additional evidence not inconsistent with the facts embodied in this Stipulation.

I.

That the jurisdiction of this Court is dependent upon a Federal question in that the cause arises under the laws of the United States pertaining to Internal Revenue, to-wit: The Revenue Act of 1928.

II.

Plaintiff herein is, and during all the times hereinafter mentioned was, a corporation organized under the Laws of the State of California, and has its principal office and place of business in the Pacific National Bank Building, 315 West Ninth Street, Los Angeles, California.

III.

That the Defendant, Galen H. Welch, was, from April 6, 1926, to June 30, 1933, the duly commissioned and acting Collector of Internal Revenue for the Sixth Collection District of California, pursuant to the Laws of the United States, and during all the times hereinafter mentioned, resided, and still resides, and has his office in the City of Los Angeles, County of Los Angeles, State of California.

IV.

That this action is brought against the Defendant as a former officer acting under and by virtue of the Revenue Act of 1928, in effect for the year 1928, on account of acts done under color of his office and of the Revenue

Laws of the United States, as will hereinafter more fully appear.

V.

That Plaintiff filed with the proper officer designated by Statute, its corporation income tax return for the calendar year 1928, as required by law, within the statutory period, to-wit: on or about the 14th day of March, 1929, and paid a tax to the Defendant of $10,761.28, as follows:

March 14, 1929 –	$ 2,690.30
June 12, 1929 –	2,690.30
September 11, 1929 –	2,690.34
December 12, 1929 –	2,690.34
Total –	$10,761.28

VI.

That thereafter, to-wit: on the 26th day of February, 1931, Plaintiff, in the time and manner provided by law and regulations for filing claims for refund, filed with the Defendant and with the Commissioner of Internal Revenue, its claim for the refund of said tax amounting to $10,761.28, a copy of which Claim is attached hereto and marked Exhibit "A". On April 4, 1932, the Plaintiff filed a Claim for the refund of said tax amounting to $10,761.28, with the Defendant and with the Commissioner of Internal Revenue, a copy of said Claim is attached hereto and marked Exhibit "B".

VII.

That on or about the 17th day of May, 1932, the Commissioner of Internal Revenue rejected that portion of Plaintiff's Claim for Refund, filed February 26, 1931, which pertained to the grounds set forth in this cause of action. The Commissioner allowed Plaintiff's Claim for Refund, filed February 26, 1931, in the amount of $1,091.39, together with interest thereon, based on other grounds not material to this suit.

VIII.

During the year 1928, the Plaintiff was the sole beneficiary of Trust No. P. T. 46, Pacific National Bank, Trustee.

IX.

The 1928 Federal Income Tax Return filed by Plaintiff reported an income of $89,677.34, and this income was made up as follows:

Income from Trust No. P. T. 46, Pacific National Bank, Trustee –		$137,007.17
Less:		
Loss of Plaintiff from its 1928 operations exclusive of the trust income –	$11,480.37	
Statutory net losses of Plaintiff as follows:		
1925 –	1,990.77	
1926 –	9,708.66	
1927 –	24,150.03	47,329.83
Net income as reported –		$ 89,677.34

The $137,007.17 representing the income of Trust P. T. 46, Pacific National Bank, Trustee, resulted from the sale of subdivision lots, and in the determination thereof said sales were treated as deferred payment sales not on the installment plan and the obligations of the purchaser were treated as having a fair market value equivalent to their face value.

X.

The Bank of America National Trust & Savings Association succeeded the Pacific National Bank as Trustee of Trust No. P. T. 46. As successor Trustee, the Bank of America National Trust & Savings Association, on January 3, 1935, filed, with the Collector of Internal Revenue for the Sixth Collection District of California, a Fiduciary return for the year 1928, for the said Trust.

XI.

Pacific National Bank, as Trustee of Trust No. P. T. 46, kept the books and records of the Trust on the cash receipts and disbursements basis. This Trustee did not file a Fiduciary or other income tax return for the Trust for the years 1927 or 1928.

XII.

Plaintiff, throughout 1928, owned over 95 per cent of the stock of Pacific National Building Corporation. Plaintiff and Pacific National Building Corporation filed separate Federal corporation income tax returns for 1928.

XIII.

Plaintiff purchased the legal title to certain real property for $309,000.00 cash and a further investment of $300,000.00 represented by its Notes Payable. This property was conveyed to the Pacific National Bank in trust as Trustee for Trust No. P. T. 46 and under the Trust Indenture the Plaintiff became the sole beneficiary of said Trust.

XIV.

Throughout 1928, Plaintiff owned over 80 per cent of the stock of Pacific National Bank.

XV.

On October 24, 1927, Plaintiff employed Frank J. Brick as sales agent. The contract with Mr. Brick is attached as Exhibit "C".

XVI.

Plaintiff had numerous stockholders throughout 1928.

XVII.

Attached as Exhibit "D", is a copy of the Trust Indenture of Trust No. P. T. 46, Pacific National Bank, Trustee.

XVIII.

Attached as Exhibit "E", is a copy of the Installment Sales Contract used by Trustee in selling lots in 1928.

XIX.

It is further stipulated that upon the decision of this Court upon the legal questions involved, the determina-

tion of the correct amount of tax on the basis of such decision shall be referred back to the parties for agreement. If the parties are unable to agree upon such determination, each shall submit its computation to this Court and each shall have the right to introduce further evidense as to any necessary figures.

DATED this 18 day of February, 1935.

MELVIN D. WILSON
Melvin D. Wilson
Attorney for Plaintiff

PEIRSON M. HALL
Pierson M. Hall
United States Attorney

EUGENE HARPOLE
Eugene Harpole
Assistant United States Attorney

Attorneys for Defendant.

APPROVED:

PAUL J. McCORMICK
United States District Judge.

EXHIBIT "A"

CLAIM

Form 843

Treasury Department

Internal Revenue Service

Revised June, 1930

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

---

The Collector will indicate in the block the kind of claim filed, and fill in the certificate on the reverse side.

[In box]: Collector's Stamp (Date received)

[xx] Refund of Tax Illegally Collected.

[ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

[ ] Abatement of Tax Assessed (not applicable to estate or income taxes).

STATE OF California }
COUNTY OF Los Angeles } ss:

[In box]: Type or Print

Name of taxpayer or purchaser of stamps Pacific National Company

Business address 822 Pacific National Building – Ninth and Hill Sts.

(Street) (City) (State)

Residence Los Angeles, California

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Sixth California – Los Angeles

2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1928, to Dec 31, 1928

3. Character of assessment or tax Income tax.

4. Amount of assessment, $.....; dates of payment .....

5. Date stamps were purchased from the Government .....

6. Amount to be refunded..... $10,761.28

7. Amount to be abated (not applicable to income or estate taxes)..... $.....

8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19....., on ..... 19.....

The deponent verily believes that this claim should be allowed for the following reasons:

The taxpayer is a California corporation, organized in 1925, and reported net losses and profits as follows:

Year 1925, Net Loss—$1,990.77; 1926, Net Loss—$13,199.43; 1927, Net Loss—$24,150.03; 1928, Net Profit—$89,677.43; 1929, Net Loss—$59,091.70.

In computing net profit for the year 1928 the taxpayer made the following errors:

(1) No deduction was made for depreciation of buildings, equipment, etc.

(2) No deduction was made for depletion of oil lease;

(3) Profit from sales of real estate in a subdivision trust were erroneously reported as based on closed sales, although the sales were made on the installment basis and proceeds of sales and collections were allocated by the trustee.

(Attach letter size sheets if space is not sufficient)

Signed PACIFIC NATIONAL COMPANY
J. T. Duncan
Secy.

Sworn to and subscribed before me this
25 day of February, 1931

....., ...

(Signature of officer administering oath) (Title)

(See Instructions on Reverse Side)

[Blank Form of Certificate.]

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

EXHIBIT "B"

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

AMENDED CLAIM

(Copy)

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

---

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

[In box]: Collector's Stamp (Date received) Received Apr 4 1932 Coll. Int. Rev. 6th Dist. Cal.

[ ] Refund of Tax Illegally Collected.

[ ] Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

[ ] Abatement of Tax Assessed (not applicable to estate or income taxes).

STATE OF California }
COUNTY OF Los Angeles } ss:

[In box]: Type or Print

Name of taxpayer or purchaser of stamps PACIFIC NATIONAL COMPANY

Business address Pacific National Bank Building,
(Street) (City) (State)

Residence Los Angeles, California.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed Sixth, California
2. Period (if for income tax, make separate form for each taxable year) from January 1, 1928, to December 31, 1928
3. Character of assessment or tax Corporation Income Tax
4. Amount of assessment, $.....; dates of payment .....
5. Date stamps were purchased from the Government .....
6. Amount to be refunded..... $10,761.28
7. Amount to be abated (not applicable to income or estate taxes)..... $.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19....., on ..... 19.....

The deponent verily believes that this claim should be allowed for the following reasons:

On February 15, 1931, a claim for refund for $10,761.28, 1928 income tax was filed by claimant. The Commissioner of Internal Revenue has not completed his examination of the claim, but is still considering it.

The ground for the original claim was that the income from a subdivision trust, of which claimant was the sole

beneficiary, had been reported in claimant's return on the completed or accrual basis, while the correct method was the installment basis.

The Commissioner suggested that the claimant had elected to use the completed basis and was estopped from using the installment basis as grounds for a claim for refund.

Claimant now wishes to amend the claim by showing that the subdivision trust is a separate entity, an association taxable as a corporation, that it did not file a consolidated return with claimant in 1928, and that its 1928 income can not be included in claimant's income or return. Accordingly, the income of the subdivision trust must be excluded from claimant's 1928 income, and the tax paid thereon by claimant, refunded. This situation prevents the doctrine of estoppel from applying to this case.

(Attach letter size sheets if space is not sufficient)

Signed PACIFIC NATIONAL COMPANY
By Edgar F. Hughes
Vice President

Sworn to and subscribed before me this
1st day of April, 1932

Norman C. Eckstein Notary Public
(Signature of officer administering oath) (Title)

My Commission Expires Nov. 20, 1932.

(See Instructions on Reverse Side)

[Blank Form of Certificate.]

INSTRUCTIONS

1. The claim must set forth in detail and under oath each ground upon which it is made, and facts sufficient to apprise the Commissioner of the exact basis thereof.

2. The claim should be sworn to by the taxpayer, if possible. Whenever it is necessary to have the claim executed by an attorney or agent, on behalf of the taxpayer, an authenticated copy of the document specifically authorizing such agent or attorney to sign the claim on behalf of the taxpayer shall accompany the claim. The oath will be administered without charge by any collector, deputy collector, or internal revenue agent.

3. If a return is filed by an individual and a refund claim is thereafter filed by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is filed. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made on the claim showing that the return was filed by the fiduciary and that the latter is still acting.

4. Where the taxpayer is a corporation, the claim shall be signed with the corporate name, followed by the signature and title of the officer having authority to sign for the corporation.

EXHIBIT "C"

SALES CONTRACT

THIS AGREEMENT made in duplicate this 24th day of October, 1927 between PACIFIC NATIONAL COMPANY, a California corporation, having its head office and chief place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter referred to as the Owner, party of the first part, and FRANK J. BRICK, duly licensed under the laws of the State of California to carry on business as a real estate broker and conducting business in the name of FRANK J. BRICK COMPANY (of which Frank J. Brick is sole owner and proprietor) with offices located at 619 West 8th Street, in the City of Los Angeles, County of Los Angeles, State of California, hereinafter referred to as Agent, party of the second part;

WHEREAS, the party of the first part is the beneficial owner of those certain lots situated in Tract No. 10078 of Los Angeles County, known as Culver City Park in Culver City, in said Los Angeles County, State of California, as per map recorded in Book 141, Pages 23, 24 and 25 of Maps, Records of Los Angeles County, as shown on, and enumerated in, the schedule of lots hereto attached, marked "Exhibit A" and hereby referred to and made a part hereof, and

WHEREAS, the legal title of said lots is vested in The Pacific National Bank of Los Angeles, which holds said title in trust for the benefit of the said PACIFIC NATIONAL COMPANY, and

WHEREAS, said PACIFIC NATIONAL COMPANY, herein referred to as Owner, has agreed to employ said FRANK J. BRICK as its agent to sell said lots,

NOW THEREFORE, THIS AGREEMENT WITNESSETH:

The Owner hereby employs the Agent as its exclusive selling agent to procure customers for all of said lots, shown in the schedule hereto attached, at the respective selling prices shown in said schedule and upon the terms herein set forth.

The Owner agrees to install, with all reasonable diligence, the local street improvements already contracted for by it, and also to cause electricity, gas and water, for use by lot purchasers, to be brought to the tract with due diligence, and to pay the cost of such local improvements.

The Agent agrees that he will devote his entire time and that of his organization to the performance of this agreement until all said lots are sold; that he will conduct a diligent and energetic selling campaign; that he will give the offering wide publicity and will advertise the same freely in the press and by the distribution of printed circulars and pamphlets; and that he will pay the entire selling expenses, including sub-agents' and salesmens' commissions, cost of advertising and publicity, clerks' hire and his organization's office overhead.

It is understood that all sales contracts shall be issued by The Pacific National Bank of Los Angeles, as the legal owner of said lots; shall be in the form prepared by said bank and shall contain the conditions and restrictions printed in such form of contract. It is further agreed that all payments on account of the purchase price of said lots shall be made to the said bank.

It is agreed that the terms of any sale shall require at least twenty-five (25) per cent as an initial and down

payment and that the balance of the purchase price shall be paid in equal monthly payments, each of which payments shall amount to at least one and one-half (1½) per cent of the gross selling price of each lot sold, or in equal quarterly payments amounting to at least four and one-half (4½) per cent of the gross selling price of each lot sold, or in equal semi-annual payments, amounting to at least nine (9) per cent of the gross selling price of each lot sold, such payments to include interest at the rate of seven (7) per cent per annum; provided, always, that the unpaid balance of the purchase price shall in no event be deferred for more than five (5) years from the date of each respective contract. If the installment payments herein mentioned to be made within five years on any contract are not sufficient to pay the whole unpaid principal with interest at seven (7) per cent per annum, as herein provided, then any remaining balance shall be by the terms of the contract paid five years from the date of the contract.

It is further agreed that a sale for cash may be made of any lot upon the basis of a price which shall equal ninety-five (95) per cent of the selling price, as shown on the schedule hereto attached.

This agreement, unless sooner terminated, shall continue from the date hereof until January 1, 1929, provided, however, that the said Agent shall make and close bona fide sales (including the procuring of the down payments to be paid to said bank) in each month during the existence of this contract, commencing November 1, 1927, which shall amount to the sum of Fifty Thousand Dollars ($50,000.00) upon the basis of the selling prices shown in schedule hereto attached, except that during the months

of November and December of each year the minimum selling requirements under this contract shall be Twenty-five Thousand Dollars ($25,000.00) per month. In the event the minimum selling requirements are not met in any month, the Owner may terminate this contract upon five (5) days notice in writing to the Agent, which notice may be forwarded by registered post to the Agent at his last known residence or business address, and the time shall commence to run upon the mailing of such notice. A failure by the Owner to exercise its right to terminate this contract by reason of the non-production of the minimum sales herein required in any month, shall not constitute a waiver of the right by the Owner to terminate the same for failure to produce the amount of minimum sales in any subsequent month.

For his services and due performance of this agreement, the Agent shall, (subject to the terms and conditions of payment thereof herein provided,) receive a commission equal to thirty-five percent (35%) of the actual selling price of each lot sold, where such selling price is not in excess of the price set forth in the schedule hereto attached, payable as follows:

To the Agent shall be paid an amount equal to eighty-eight percent (88%) of the down payment received by the said bank, on each sale, provided the down payment is not in excess of twenty-five percent (25%) of the selling price;

To the Agent shall also be paid amounts equal to forty percent (40%) of all other and subsequent payments received by the said bank on account of the principal of the selling price (but not the interest thereon), until the

Agent's thirty-five percent (35%) commission of the actual selling price shall have been paid in full.

It is understood that should any contract or contracts lapse before the Agent has received the commission herein provided thereon, the Agent is to receive only the percentages herein mentioned payable on receipt of the installments received by the bank up to the time of cancellation. In case of default the Owner shall exercise its best judgment and discretion in regard to enforcing the provisions of the contract regarding such default, and as to which of the several remedies provided in the contract of sale or by law shall be pursued; and in the event that, under a purchaser's contract, his rights to purchase are cancelled and the title quieted against him, the lot upon which said contract is so cancelled shall be put back on the market by the Agent under the same commission and terms as herein provided in the first instance, provided, however, that the Agent's employment to resell any such lots, as to which the contract has been cancelled, shall not extend beyond the expiration or termination of this agreement.

The Agent promises and agrees that he will not make, or permit his assistants or salesmen to make, any misrepresentations or misstatements of fact to induce purchasers to buy said lots, either verbally or in advertisements or otherwise, and the Owner shall have the right, provided any misrepresentations be made by the Agent, his assistants or salesmen, as aforesaid, immediately to terminate and cancel this agreement, as to all unsold lots, and it is a condition upon which this agreement is entered into by the Owner that no misrepresentations or misstatements of fact shall be made.

It is further understood that the Owner shall have the sole right to change the selling price of any of the unsold lots, to be sold under this contract, by giving the Agent thirty (30) days notice in writing of any such desire to change; it being understood and agreed that such change shall be reasonable considering market conditions at the time of such change.

Should the price at which any lot is sold be greater than the price set forth in the schedule hereto attached, then a sum equal to fifty percent (50%) of the amount by which the sale price exceeds the price set forth in the schedule hereto attached, shall be paid to the agent, in addition to the basic commission of thirty-five percent (35%) on the schedule selling price; provided that the payment of the additional commission shall be payable only as follows:

After the full thirty-five percent (35%) commission on the original schedule selling price shall have been paid to the agents, at the times and in the manner hereinbefore provided, the owner shall cause to be paid to the agent, as each subsequent installment of principal is received on account of the purchase, an amount which shall bear to the amount of principal received the proportion which the unpaid balance of the agent's commission bears to the unpaid balance of the principal of the purchase price, less such unpaid commission. As in the case of the original thirty-five percent (35%) commission, the payment of the additional commission shall at all times be contingent upon the receipt by said bank of the instalments of principal upon receipt of which, as hereinbefore provided, such proportionate payments of commission are to be made to the Agent.

The Owner shall (providing a contract of sale shall have been entered into by the purchaser and approved by the bank), cause the said bank to pay to the Agent his proportion of the commission dependent upon the receipt of the down payment on each sale, within three (3) days after the bank shall have received such down payment; and where checks are received on account of a down payment, the bank shall not be deemed to have received such down payment until such checks have been cleared and collected by the bank.

The Owner shall cause the said bank to render each month to the Agent a statement showing the condition of payments upon all contracts of sale up to the time of such statement; also, shall cause said bank, with such monthly statement, to pay to the Agent all commissions then due and payable to the Agent and not theretofore paid to the Agent (all as in this agreement provided).

The covenants and provisions hereof shall inure to the benefit of, and be binding upon, the heirs, executors, administrators, successors and assigns of the respective parties; but the agent shall have no right to assign this agreement in whole or in part without the consent of the owner —the owner having contracted in reliance on the personal moral character of the Agent. In the event that the Agent shall die or for any reason be permanently physically or mentally unable to give personal attention to the performance of this agreement, the Owner may at any time thereafter, notwithstanding any other provisions of this agreement elect, without notice, to terminate this agreement as to all lots not sold.

IN WITNESS WHEREOF, the party of the first part has caused its corporate name and seal to be hereunto affixed, by its proper officers thereunto duly authorized, and the party of the second part has hereunto set his hand and seal, all on the day and year in this Agreement first above written.

PACIFIC NATIONAL COMPANY, a corporation

By (Signed) Fred Swensen
Its Vice President

(SEAL)

And (Signed) F. M. Shelton
Its Secretary

Party of the first part

(Signed) Frank J. Brick

Party of the second part

Lot No.	Price	Lot No.	Price	Lot No.	Price
1	$8500	61	$4500	121	$3445
2	5000	62	4000	122	3250
3	5000	63	4000	123	2285
4	5000	64	4000	125	2285
5	5000	65	4000	126	2285
6	9000	66	4000	127	2285
7	10494	67	4000	128	2285
8	5000	68	4000	129	2285
9	5000	69	4000	138	2850
10	5000	70	3700	139	2765
11	5000	71	3700	145	2285
12	5000	72	3700	146	2275

13	5000	73	3700	147	2265
14	5000	74	3700	148	2255
15	9620	75	3700	149	2245
16	9620	76	3700	150	2245
17	4500	77	3700	151	2255
18	4500	78	3700	153	2285
19	4500	79	3700	156	3445
20	4500	80	3300	157	2285
21	4500	81	3300	158	2215
22	4500	82	3300	159	2215
23	4500	83	3300	161	2185
24	9620	84	3300	162	2175
25	9620	85	3300	163	2145
26	4500	86	3300	164	2125
27	4500	87	3300	165	2085
28	4500	88	3300	166	2065
29	4500	89	3400	167	2245
30	4500	90	3475	168	2165
31	4500	91	3700	169	2165
32	4500	92	4000	170	2165
33	8750	93	6250	172	2165
34	8750	94	9450	173	2165
35	4500	95	3750	174	2165
36	4500	96	3350	175	2165
37	4500	97	3000	176	2245
38	4500	98	3000	177	2265
39	4500	99	3000	179	3345
40	4500	100	3000	180	2265
41	4500	101	3000	182	2255
42	8750	102	3000	184	2255
43	8750	103	3000	185	2265

44	5000	104	3000	186	2275
45	5000	105	3000	187	2285
46	5000	106	3000	188	2295
47	5000	107	3000	189	2315
48	5000	108	3000	190	2325
49	5000	109	3000	191	2345
50	5000	110	3000	193	2365
51	8750	111	3000	194	2375
52	6250	112	2350	195	3145
53	5000	113	2185	196	2910
54	5000	114	2185	197	2375
55	5000	115	2185	198	2385
56	5000	116	2185	199	2375
57	5000	117	2185	200	2365
58 and 59	25000	118	2185	201	2355
60	5400	119	2185	202	2345
				203	2335

Lot No.	Price	Lot No.	Price	Lot No.	Price
205	$2325	270	$7250	332	$2485
206	2315	271	4500	333	4250
207	2295	272	3900	334	2860
208	2285	273	2435	335	1945
209	2285	274	2435	336	1945
211	2265	275	2395	337	1945
212	2950	276	2365	338	1945
213	4450	277	2325	339	1945
214	2265	278	3450	340	1945
215	2255	279	2445	341	1945
216	2215	280	2445	342	1945
218	2165	281	2545	343	1945

219	2165	283	3900	345	1945
220	2165	282	2365	346	1955
221	2155	284	4500	347	1965
222	2145	285	4875	348	1975
223	2135	286	2385	350	2065
224	2135	287	2385	351	2145
225	2245	288	2385	352	3465
226	2345	289	2385	353	3650
227	2285	290	2385	354	2345
228	2295	291	2385	355	2295
229	2325	292	2385	356	2285
230	2375	293	2385	357	2285
231	2435	294	2385	358	2295
232	2535	295	2385	360	2315
233	2635	296	2385	361	2315
234	2745	297	2385	362	2315
235	2865	298	3145	363	2345
236	2885	299	2940	364	2365
237	2925	300	2385	365	2385
238	2935	301	2385	366	3145
239	2985	302	2385	367	2940
240	4880	303	2385	368	2465
241	4350	304	2385	369	2455
245	2365	305	2385	371	2445
246	2365	306	2385	372	2435
247	2365	307	2385	373	2425
248	2365	308	2385	374	2415
249	2365	309	2385	375	2405
250	2365	312	4875	376	2395
251	2365	313	4350	378	2385
252	2365	314	3450	379	2385
253	2365	315	3350	380	3685

254	2365	316	3250	381	3465
255	2385	317	3250	382	2385
256	3145	318	3250	383	2385
257	2940	319	3250	384	2375
258	2385	320	3250	385	2365
259	2385	321	3250	386	2335
260	2385	322	3250	387	2310
261	2385	323	3250	388	2295
262	2385	324	3250	390	2275
263	2385	325	3150	391	2265
264	2385	326	3000	392	2255
265	2385	327	2900	393	2245
266	2385	328	2800	394	2235
267	2385	329	2700	395	2225
268	2385	330	2685	396	2215
269	2425	331	2865	398	2255

Lot No.	Price	Lot No.	Price	Lot No.	Price
399	$2965	467	$2560		
400	2860	468	2550		
401	2145	469	2540		
402	1945	470	2530		
403	2065	471	2645		
404	2100	472	3300		
405	2200	473	3840		
406	3100	474	2265		
407	3045	475	2255		
408	2385	476	2245		

409	2385	477	1965
410	2415	478	2650
411	2425		
412	2435		
413	2445		
414	2455		
415	2465		
416	2475		
417	2485		
418	2495		
419	2510		
420	2520		
421	2530		
422	2540		
423	2550		
424	2650		
425	4250		
426	4650		
427	2650		
428	2660		
429	2660		
430	2670		
431	2680		
432	2690		
433	2700		
434	2710		
437	2750		
438	2780		

439	3365
440	3145
443	2780
444	2770
445	2760
446	2760
447	2740
448	2730
449	2720
450	2710
451	2700
452	2725
453	4850
454	4345
455	2680
456	2670
457	2660
458	2650
459	2640
460	2630
461	2620
462	2610
463	2600
464	2590
465	2580
466	2570

EXHIBIT "D"

COPY

DECLARATION OF TRUST

TRUST NUMBER P T 46

KNOW ALL MEN BY THESE PRESENTS:

That THE PACIFIC NATIONAL BANK OF LOS ANGELES, a National Banking Association, organized and existing under the laws of the United States of America, with its office and principal place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the "TRUSTEE", has received from the Pacific National Company, a corporation organized and existing under the laws of the State of California and having its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, hereinafter called the "BENEFICIARY", a Deed dated.....1927, conveying to said Trustee that certain real property in Culver City, in the County of Los Angeles, State of California, described as follows:

"That certain property situated in the City of Culver City, County of Los Angeles, State of California.

* * * * * * * * *

That no consideration has been paid by said Trustee for the conveyance to it of the above described Trust Property.

That, WHEREAS, said Pacific National Company the Beneficiary above named, by its approval of this Declaration of Trust, acknowledges that it is indebted to H. W. McLeod, of the City of Los Angeles, County

of Los Angeles, state of California, hereinafter called the "PAYEE", in the principal sum of ($300,000.00) Three Hundred Thousand Dollars,, as evidenced by three certain promissory notes respectively (Hereinafter referred to as "SAID NOTES"), in words and figures as follows, to-wit:

Los Angeles, California, July 1st 1927.

$50,000.00

On or before the 15th day of July 1928, FOR VALUE RECEIVED, Pacific National Company, a corporation organized and existing under the laws of the State of California, promises and agrees to pay, or cause to be paid to H. W. McLeod, of the City of Los Angeles, County of Los Angeles, State of California, at The Pacific National Bank of Los Angeles, Hill at Ninth Street, Los Angeles, California, the principal sum of Fifty Thousand ($50,000.00) Dollars together with interest thereon at the rate of six (6%) per cent per annum, payable annually.

Also costs of collection and attorney's fees in a reasonable amount in case this note be not paid at maturity;

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal.

Should default be made in the payment of principal and/or interest when due, then the whole sum of principal and interest shall become immediately due and payable in gold coin of the United States of the present standard of weight and fineness.

This note is secured by a certain Declaration of Trust issued by The Pacific National Bank of Los Angeles, a

National Banking Association, dated July 1st 1927, and known as Trust No. P T 46 and is subject to the terms and conditions thereof.

PACIFIC NATIONAL COMPANY,

By sgd "Fred Swensen"
Vice President

By sgd "F. W. Shelton,"
Secretary

Los Angeles, California, July 1st 1927.

$50,000.00

On or before the 15th day of July 1929, FOR VALUE RECEIVED, Pacific National Company, a corporation organized and existing under the laws of the State of California, promises and agrees to pay, or cause to be paid to H. W. McLeod, of the City of Los Angeles, County of Los Angeles, State of California, at The Pacific National Bank of Los Angeles, Hill at Ninth Street, Los Angeles, California, the principal sum of Fifty Thousand ($50,000.00) Dollars together with interest thereon at the rate of six (6%) per cent per annum, payable annually.

Also costs of collection and attorney's fees in a reasonable amount in case this note be not paid at maturity;

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal.

Should default be made in the payment of principal and/or interest when due, then the whole sum of principal and interest shall become immediately due and payable

in gold coin of the United States of the present standard of weight and fineness.

This note is secured by a certain Declaration of Trust issued by The Pacific National Bank of Los Angeles, a National Banking Association, dated July 1st, 1927, and known as Trust No. P T 46 and is subject to the terms and conditions thereof.

PACIFIC NATIONAL COMPANY,
By sgd "Fred Swensen",
Vice President

by sgd "F. W. Shelton".
Secretary

Los Angeles, California, July 1st 1927.

$150,000.00

On or before the 15th day of July 1930, FOR VALUE RECEIVED, Pacific National Company, a corporation organized and existing under the laws of the State of California, promises and agrees to pay, or cause to be paid to H. W. McLeod, of the City of Los Angeles, County of Los Angeles, State of California, at The Pacific National Bank of Los Angeles, Hill at Ninth Street, Los Angeles, California, the principal sum of One Hundred and Fifty Thousand ($150,000.00) Dollars together with interest thereon at the rate of six (6%) per cent per annum, payable annually.

Also costs of collection and attorney's fees in a reasonable amount in case this note be not paid at maturity;

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal.

Should default be made in the payment of principal and/or interest when due, then the whole sum of principal and interest shall become immediately due and payable in gold coin of the United States of the present standard of weight and fineness.

This note is secured by a certain Declaration of Trust issued by The Pacific National Bank of Los Angeles, a National Banking Association, dated July 1st 1927, and known as Trust No. P T 46 and is subject to the terms and conditions thereof.

PACIFIC NATIONAL COMPANY,
By sgd "Fred Swensen",
Vice President
by sgd "F. W. Shelton".
Secretary

Los Angeles, California, July 1st 1927.

$50,000.00

On or before the 15th day of July 1931, FOR VALUE RECEIVED, Pacific National Company, a corporation organized and existing under the laws of the State of California, promises and agrees to pay, or cause to be paid to H. W. McLeod, of the City of Los Angeles, County of Los Angeles, State of California, at The Pacific National Bank of Los Angeles, Hill at Ninth Street, Los Angeles, California, the principal sum of Fifty Thousand ($50,000.00) Dollars together with interest thereon at the rate of six (6%) per cent per annum, payable annually.

Also costs of collection and attorney's fees in a reasonable amount in case this note be not paid at maturity;

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal.

Should default be made in the payment of principal and/or interest when due then the whole sum of principal and interest shall become immediately due and payable in gold coin of the United States of the present standard of weight and fineness.

This note is secured by a certain Declaration of Trust issued by The Pacific National Bank of Los Angeles, a National Banking Association, dated July 1st 1927, and known as Trust No. P. T. 46 and is subject to the terms and conditions thereof.

PACIFIC NATIONAL COMPANY,
By sgd "Fred Swensen",
Vice President
by sgd "F. W. Shelton".
Secretary

Which said indebtedness is hereby declared to be a first lien upon, and is deemed to be secured by, the Trust Property and the entire beneficial interest under this Trust, in the manner hereinafter provided;

NOW, THEREFORE, this DECLARATION OF TRUST,

WITNESSETH:

That said, THE PACIFIC NATIONAL BANK OF LOS ANGELES, Trustee hereunder, as aforesaid, here-

by CERTIFIED AND DECLARES that it holds and will hold such title to the real property as has been actually conveyed to it and/or shall thereafter become vested in it, IN TRUST for the benefit of said Pacific National Company, a corporation, the Beneficiary hereunder, for the purposes aforesaid, and upon all of the trusts, terms and conditions, covenants and ageements herein contained, all of which the Beneficiary and Payee, by their written approval hereof, agree and bind themselves, their successors and assigns, making themselves by such approval parties hereto, namely:

FIRST: The Beneficiary by its ratification and approval of this Declaration of Trust, does promise and agree;

(a) To pay, satisfy and discharge at least five (5) days before delinquency, all claims, taxes, liens, assessments, charges and encumbrances, affecting or purporting to affect adversely to the Trustee herein, title to any part of the said Real Property, and all costs, charges and expenses of this trust and Trustee's fees as herein provided, together with taxes of the fiscal year 1927-1928, and all charges taxes, liens and assessments hereafter attaching to, or becoming a lien on said Real Property.

(b) To institute, maintain, appear in or defend any action or proceeding affecting or purporting to affect the Real Property or title thereto, or this trust, or the rights of the Trustee, the Payee, or the Beneficiary, hereunder, and to protect and indemnify the Trustee to its satisfaction in taking any such action or proceeding, together with attorney's fees in a reasonable sum to be fixed by the Court, whether such action or proceeding progress to

judgment or not, and whether brought by or against the Trustee, the Payee, or the Beneficiary;

(c) To protect said Real Property in the event said Real Property is subdivided in the manner herein provided, and to pay, or cause to be paid, all costs and expenses of said subdivision, or subdivisions; and of all improvements hereafter made upon said Real Property, and to protect and save harmless said Trustee, said Payee, and said Real Property, of, from and against all damages and expense by reason of said subdivision and/or improvements of any character whatsoever made, or to be made, on said property, and, without demand, to furnish said Trustee indemnity in such an amount as said Trustee may deem necessary to protect the Trustee, the Payee, and/or the Real Property, from loss, damage and/or expense by reason of such subdivision and/or improvements;

(d) To pay within thirty (30) days from the date of advancement, and without demand, all sums advanced by the Trustee and/or the Payee under the terms hereof, with interest thereon from date of advancement until repayment at the rate of seven per cent. (7%) per annum;

(e) To pay the principal and interest upon said notes in the manner and at the times herein provided;

(f) If said Trust Property, or any part thereof, is subdivided by the Beneficiary, to cause to be prepared and filed with said Trustee a map of the property so subdivided, whereby said property is divided into Parcels or lots, and to pay all costs and expenses thereof.

That it will cause, from time to time, surveys to be made of those parcels or portions thereof of the property covered hereby, which it shall have elected to subdivide

into lots, and will cause a map of the survey of said subdivision, or subdivisions, to be prepared and presented to the Trustee for its approval, execution and acknowledgement; and after such approval, execution and acknowledgment thereof, said Beneficiary will cause said map to be filed for record in the office of the County Recorder of Los Angeles County, State of California, and to pay all costs and expenses of such subdivision, or subdivisions, and the improvement thereof;

(g) To contract for any and all labor and materials furnished in the improvement of said property and to obtain and file with said Trustee from each contractor who is to furnish labor, and from each materialman who is to furnish material, in connection with any and all work upon said property, and prior to the commencement of such labor, or prior to the delivery of such material, as the case may be, a waiver of his right of lien against said Trust Property, by reason thereof;

(h) That the acceptance by said Payee, or the Trustee for said Payee, of any sum or sums of principal, and/or interest secured hereby, after the date when such sum or sums shall become due and payable, or the performance of any other obligation by the Beneficiary after the date herein provided for the performance thereof, shall not operate as a waiver to the right to insist upon the payment of all other obligations promptly as herein provided; and to declare a default as herein provided for the failure to pay such sums or to perform such obligations promptly as herein provided;

(i) To perform each and every act herein provided to be performed by the Beneficiary.

SECOND: Should the Beneficiary fail or refuse to make any of the payments, or do any of the acts herein mentioned, in the manner and at the times herein provided, then the Trustee and/or the Payee, may without notice to or demand upon the Beneficiary, make or do the same in such manner and to such extent as they, or any of them, may elect; and may pay, purchase, contest, or compromise any claims, liens or encumbrances which, in their judgment, appear to affect said Trust Property or these trusts; but neither the Trustee nor the Payee shall be under any obligation to take any such action; and no such action of the Trustee or Payee shall affect or relieve the Beneficiary from any default.

THIRD: Should breach or default be made by the Beneficiary in payment of any indebtedness and/or in the performance of any obligation, covenant, promise or agreement herein mentioned, then the Payee may declare all sums secured hereby immediately due, and in such case, shall execute and deliver to the Trustee a written declaration of default and demand for sale and shall surrender to the Trustee any receipts or other documents evidencing any expenditure secured hereby. Thereafter there shall be recorded in the office of the Recorder of the County or Counties wherein said Real Property, or some part thereof, is situated, a notice of such breach of default and of election to sell or cause to be sold the herein described trust property to satisfy the obligations hereof.

After three months shall have elapsed following such recordation of said notice, the Trustee, without demand on the Beneficiary, shall sell said Trust Property as herein provided, having first given notice of the time and place of such sale in the manner and for a time not less than

that required by the laws of the State of California for sales of real property under Declarations of Trust.

The Trustee may postpone sale of all, or any portion, of said property by public announcement at the time fixed by said notice of sale, / and may thereafter postpone said sale from time to time by public announcement at the time fixed by the preceding postponement; and without further notice it may make such sale at the time to which the same shall be so postponed, provided, however, that the sale or any postponement thereof must be made at the place fixed by the original notice of sale.

provided the same is requested only by the Payee in writing

At the time of sale so fixed, the Trustee may sell the Trust Property so advertised, at public auction, to the highest bidder for cash in United States gold coin, all payable at time of sale, and after any such sale and due payment made, shall execute and deliver to such purchaser a deed and/or assignment conveying the Trust Property so sold, but without covenant or warranty, express or implied, regarding title, possession or incumbrances. The Beneficiary hereby agrees to surrender immediately and without demand possession of said Trust Property to such purchaser. The recitals in such deed and/or assignment of any matters or facts affecting the regularity or validity of said sale shall be conclusive proof of the truthfulness thereof and such deed and/or assignment shall be conclusive against all persons as to all matters or facts therein recited. The Trustee, or the Payee, or any person on behalf of either, or any other person, may purchase at such sale.

FOURTH: The Trustee shall apply the proceeds of any such sale to the payment of:

1. (a) Expenses of sale; (b) all costs, charges and expenses of the Trustee and of these trusts, including cost of evidence of title and Trustee's fee in connection with sale.

2. All sums expended under the terms hereof, not then repaid, with accrued interest at the rate of ten per cent per annum.

3. Accrued interest on said note, the payment of which is secured hereby.

4. Unpaid principal of said notes; and

5. The remainder, if any, to the person, or persons, legally entitled thereto, upon proof of such right.

FIFTH: (a) In the event of a default by the Beneficiary, and sale of the Real Property pursuant to the provisions of paragraphs Third and Fourth hereof, and at any sale or sales so conducted by the Truster after Default and pursuant to election and notice to sell, the property to be sold shall be the Real Property not theretofore conveyed by the Trustee or contracted by it to be sold to purchasers, together with all easements and/or rights of way (if any), reserved by the Trustee, and also the entire beneficial interest hereunder of the said Beneficiary in all contracts of sale of lots then outstanding and in the Improvement Fund, held by the Trustee under this Trust at the time of sale; and every other interest, right and privilege hereunder of the Beneficiary; but the Trustee shall retain the legal title to all of said Property covered by Contracts of sale issued by it, so as to enable it to carry out said contracts.

(b) All moneys in the hands of the Trustee at the time of said Notice of Default, and not received by the Trustee to be applied towards payment of the principal or interest on said promissory notes, and all moneys thereafter collected by the Trustee up to the time of sale (less Trustee's fees in every case) shall, at the election of the Payee, be paid over to the Payee, and the receipt thereof shall in no way cure the default, or, unless it be payment in full of the said notes with the Trustee's fees and disbursements, prevent the sale, but shall operate to reduce the balance owing from the Beneficiary.

(c) Collections received after the sale, from holders of outstanding contracts shall be distributed to the purchaser at the Trustee's sale, less the fees of the Trustee, in accordance with the schedule herein set forth, which may be retained by the Trustee from the amounts so collected; and when the terms of such contracts have been complied with by the purchasers of such lots, the Trustee shall convey the same to the purchasers without any liability except for the accounting for the moneys collected thereon.

SIXTH: Should the Payee become purchaser at the sale provided for in subdivisions THIRD AND FOURTH hereof, they shall not be required to pay cash in the full amount bid for the property, but they shall pay in cash the amount of the Trustee's fees and expenses of the sale, plus the excess, if any, bid over and above such fees and expenses, and over and above sums then owing to them from the Beneficiary; with such exceptions, the Payee may furnish to the Trustee receipts in lieu of cash bid.

PROVIDED, HOWEVER, that should there remain unsatisfied any portion of the indebtedness evidenced by the promissory notes hereinabove described, after the sale of the Trust Property hereunder and the application of the proceeds of such sale as herein provided, then and in that event the Trustee, if and when requested in writing by the Payee, shall take such further and/or other action to enforce payment of such deficiency as to said Trustee may seem proper; and PROVIDED, FURTHER, that such request of the Payee shall be accompanied by a sum of money, sufficient in the judgment of the Trustee, to cover all damages, costs and charges in connection therewith.

SEVENTH: The Policy of Title Insurance Number 38403, Order Number 947795, amount Six Hundred Nine Thousand ($609,000.00) Dollars, issued by the Title Insurance & Trust Company, a corporation of Los Angeles, dated the 16th day of April 1927, at 8 o'clock A. M., showing the title to the Trust Property vested in the Pacific National Company, subject to the liens, conditions, restrictions, reservations, rights and rights of way of record together with the recorded deed conveying said Trust Property from the Beneficiary, said Pacific National Company, to said Trustee The Pacific National Bank of Los Angeles, shall be sufficient evidence of title for the purposes of this Trust.

EIGHTH: After said deed shall have been recorded the Trust Property, or any portion thereof (subject to the provisions hereof) may be subdivided in such manner as the Beneficiary and the Trustee may determine, in which event the Trustee is authorized to execute and acknowledge for record such subdivision map and/or maps, as

may be approved in writing by the Beneficiary, and to dedicate to public use all streets, alleys and public places shown on said map, and to grant in and/or over such subdivision, rights of way and/or easements for public utilities.

The Trustee shall execute contracts of sale, or deeds, covering any part of said Trust Property or any of the lots shown on the map of the subdivision or subdivisions of said Trust Property filed with the Trustee by the Beneficiary, to purchasers upon the sole written instructions of the Beneficiary.

Lands covered hereby may be released provided no Declaration of Default and Demand for Sale be on file with said Trustee (under the provisions hereof) at time of demand and payment therefor, from the lien of the hereinbefore described debt, upon payment to said Trustee, for the account of the Payee hereunder, of the sum of Seven Hundred ($700.00) Dollars for each lot in said subdivision, until there shall have been paid into said indebtedness fund, under the provisions of this paragraph, an aggregate amount of principal equal to the balance then remaining unpaid on the indebtedness of the Beneficiary to the Payee hereunder, whereupon the whole of the Trust Property hereunder shall be released from the lien of the indebtedness hereinabove described.

PROVIDED, FURTHER, HOWEVER, that said Trust Property, or any part thereof, may be sold without same being subdivided.

The entire sales price of every lot or parcel of said Trust Property, together with all interest on each contract of sale shall be paid to the Trustee.

All moneys received by the Trustee derived from the sale of said lots or parcels of said Trust Property shall be distributed:

1st: To the payment of the costs, fees, expenses, damages, and advances (if any) with interest, hereunder of said Trustee;

2nd: To the payment of all expenses in connection with the sale of said Trust Property;

3rd: To the payment of taxes and assessments levied and assessed against the Trust Property;

4th: To the payment into an account designated the "IMPROVEMENT FUND", ten (10%) per cent of the selling price of such lots or parcels of said Trust Property, for the payment of the improvements (if any) to be placed upon said Trust Property by the Beneficiary, by and upon the written order of the Beneficiary. All moneys in the Improvement Fund which, in the discretion of the Trustee, are not required for the purposes thereof, shall be paid to or upon the written order of the Beneficiary;

5th: To the payment into a fund hereinafter called the "INDEBTEDNESS FUND," the sum of Seven Hundred ($700.00) Dollars for each lot sold where the sale is for cash; In cases where the sale is on contract with partial cash payment and the balances of the purchase price payable in deferred payments, fifty (50%) per cent of the moneys received after items 1st, 2nd, 3rd and 4th hereunder shall have been provided for, shall be paid into the indebtedness fund, for the account of the Payee hereunder.

PROVIDED, HOWEVER, that should 50% of the remaining moneys herein referred to, be not equal to the amount of the release price of the lot sold, then the Trustee shall pay into the Indebtedness Fund such greater percentage of the remainder of the sales prices as shall be equal to such release price.

PROVIDED, FURTHER, that should said 50% of the remainder of the sales price of any lot or parcel exceed the amount of the release price thereof, then the Trustee, at the request of the Beneficiary, may apply such excess towards the release price of any other lot or parcel of said Trust Property; and the Beneficiary shall at all times, upon payment of any part of the principal of said promissory notes, be entitled to releases of lots or parcels selected by it, the aggregate of the release prices of which are equivalent to the amount so paid;

6th: The balance to the Beneficiary.

NINTH: Interest upon the notes above described, payment of which is secured hereby as aforesaid, shall be payable only upon, and upon, an amount not exceeding the balances from time to time unpaid to the Payee.

Upon payment to the Payee of said notes and interest thereon, and upon payment in full of all sums owing to the Payee and secured hereby, all interest of said Payee in this Trust shall cease and terminate and the Trustee shall thereafter hold the Trust Property in Trust for the sole use and benefit of, and convey the same, in the manner herein provided, and subject to the terms and conditions hereof, upon the sole written instructions of the Beneficiary and distribute all sums distributable under the terms hereof to the Beneficiary.

TENTH: The Beneficiary herein named shall have the right and privilege of dividing its Beneficial Interest hereunder and assigning and transferring all or portions of said Beneficial Interest, subject to all of the terms, conditions, obligations and provisions hereof, PROVIDED, HOWEVER, that every such assignee or transferee shall accept a Certificate of Beneficial Interest issued by the Trustee in its usual form, and thereafter, said Trustee shall have full power and authority to make any distribution to the Beneficiaries under this Trust to the registered owners of such Certificates, in the proportion that the records of said Trustee show them to be entitled thereto, as and when each such distribution is made.

ELEVENTH: No sale or transfer of any interest represented by any Certificate of Beneficial Interest so issued by the Trustee hereunder shall be valid or binding upon said Trustee until the Certificate evidencing the Beneficial Interest so sold or transferred shall have been duly assigned, transferred and surrendered to said Trustee for cancellation, in accordance with its usual custom and practice; excepting only where such interest may pass or be transferred by Decree or Order of Court; and then only upon presentation to the Trustee of satisfactory proof of the validity and regularity of such Decree or Order, and the proceedings in connection therewith. In the event of the loss or destruction of any Certificate of Beneficial Interest so issued by the Trustee, the Trustee will issue a new Certificate of Beneficial Interest in lieu of such lost or destroyed Certificate only upon compliance with such terms and conditions as the Trustee may consider necessary or advisable for its protection. In the event of the hypothecation of any such Beneficial Interest hereunder

represented by Certificate of Beneficial Interest so issued by the Trustee, such hypothecation will not be valid as to, or binding upon, the Trustee unless and until the Certificate representing the Beneficial Interest so hypothecated shall have been duly endorsed and delivered to the Trustee for cancellation and issuance of a new certificate, evidencing the existence of such hypothecation, and in the event of the foreclosure thereof the Trustee shall not be required to recognize the transfer of interest as consummated by such foreclosure, unless and until presentation to the Trustee of satisfactory proof of the regularity and validity of the proceedings in connection with such foreclosure.

TWELFTH: In the event any portion of the interest of the Beneficiary hereunder shall be transferred pursuant to the provisions hereof, each such transfer shall be made subject to any and all obligations imposed upon the Beneficiary herein named by the terms hereof; and such transferee or transferees shall contribute toward the payment of said note and interest thereon, together with all liens, encumbrances, taxes, assessments and other charges against the Trust Property, in proportion to their respective Beneficial Interests hereunder, at the times such charges become due and payable.

If any Beneficiary hereunder fails to pay his proportionate share of any sum whatsoever (before such sum becomes due), properly payable in connection with this Trust by the Beneficiaries hereunder, then, any other Beneficiary of this trust may pay or advance the same and shall thereupon be entitled to a lien upon the interest of the Beneficiary so failing to contribute, for any sums so advanced, together with interest at seven per cent.

(7%) per annum from date of advancement until repaid, said lien being enforceable in the manner herein provided. Upon the failure of any beneficiary to contribute as above provided, and upon the execution and delivery to the Trustee herein named, of a written Declaration of Default and Demand for Sale, either by the Beneficiary making an advance as above provided, or by a majority in interest of the then Beneficiaries of this trust, and without the necessity of making demand upon the beneficiary so failing to contribute, the Trustee shall sell the interest hereunder of the beneficiary so failing to contribute, or such part thereof as it shall deem necessary to sell in order to pay the amount due from such beneficiary, in the following manner, namely:

Said Trustee shall first publish notice of the time and place of such sale with a description of the interest to be sold, either twice a week for three successive weeks, or, within the sole discretion of the Trustee, at least once a week for six successive weeks, in some newspaper of general circulation published in the City of Los Angeles, California, and may from time to time postpone such sale by publication of a notice of postponement in the same manner, or, at its option, by public announcement thereof at the time and place of sale so advertised; and at the time and place of sale so fixed, said Trustee may sell said interest, or any portion thereof, at public auction to the highest bidder for cash, in gold coin of the United States, and the Trustee or any Beneficiary or Payee hereunder, or any person on behalf of either, or any firm, corporation or other person, may bid and purchase at such sale; and after such sale and after due payment made, said Trustee shall execute and deliver to the purchaser, or pur-

chasers, at such sale, an assignment, or assignments, of the interest, or interests, in this trust so sold to such purchaser or purchasers, SUBJECT, however, to all of the terms and conditions of this trust.

The Beneficiary for itself, its successors and assigns, does hereby assign, transfer and convey to said Trustee, title to its Beneficial Interest hereunder, sufficient to enable it to convey and assign all or any portion of said Interest upon a sale thereof, as above provided; and whenever it is necessary to give any act of said Trustee legal force or effect, said Trustee shall be taken as, and its said act as done by, the attorney in fact of any such Beneficiary of this trust; and any transfer of beneficial interest under this trust by the Beneficiaries hereunder shall be made and accepted subject to the foregoing transfer of Beneficial Interest and to the power and authority vested in the Trustee as aforesaid; and the Beneficiary herein named, by its approval hereof, and any person who shall hereafter become a Beneficiary of this Trust, by the acceptance of a Beneficial Interest hereunder, does make, constitute and appoint said Trustee, its attorney in fact, for the uses and purposes herein provided, thereby ratifying and confirming all that said attorney-in-fact may do in the premises.

In the event of a sale of any portion of the Beneficial Interest hereunder, and after such sale and due payment made thereon, said Trustee shall execute and deliver to the purchaser or purchasers evidence of a transfer of the Interest hereunder so sold to such purchaser or purchasers, but without covenant or warranty, express or implied, regarding title thereto, and any Beneficial Interest so purchased shall be subject to all of the terms and conditions

herein set forth; and the recitals in the assignment or assignments or evidence of transfer of interest so executed by said Trustee of default, publication of notice of sale, demand that such sale should be made, postponement of sale, terms of said sale, purchasers, payment of purchase money, and any other fact affecting the regularity and validity of such sale, shall be conclusive against all persons as to all matters recited therein. Demand and notice of the time and place of sale or postponement of sale are hereby waived by the Beneficiary herein named, and by any person who shall become beneficially interested hereunder.

Said Trustee shall apply the proceeds of such sale or sales to the payment of the following amounts:

(a) To the expense of such sale, including posting and advertising, together with costs, fees and charges, and expenses of the Trustee and of these trusts, and counsel fees, in a reasonable sum, and said Trustee's fees of One Hundred Dollars for making said sale; which said amounts shall become due and payable upon the first publication by the Trustee of the notice of such sale;

(b) To all sums which may have been paid or advanced in accordance with the provisions hereof, and not repaid, together with accrued interest thereon.

AND, LASTLY, any balance to the person or persons entitled thereto.

If the amount received upon any such sale shall be insufficient to pay the charge against the Interest sold, then the difference shall be pro-rated among the Beneficiaries, according to their respective interests.

THIRTEEN: Anything herein contained to the contrary notwithstanding, in the event of a sale of the Trust Property, or in the event of a sale of a Beneficial Interest hereunder, pursuant to the provisions hereof, the Payee shall have no cause of action for any personal judgment against any person who shall hereafter become a Beneficiary of this trust, except for the proportionate part thereof represented by the proportionate Beneficial Interest hereunder acquired by such successor.

FOURTEENTH: The Trustee shall not be answerable or responsible for the validity of the conveyance to it of the Trust Property, nor the value thereof, nor the title thereto, nor for any easements, liens, encumbrances, restrictions or other clouds thereon, or claims thereto,—the sole, only and exclusive liability of the Trustee being to convey, in the manner and for the purposes and duration of this Trust, as herein provided, such title to the Trust Property as has actually been conveyed to it, or may hereafter become vested in it, and by it accepted in trust hereunder, and to distribute any moneys received by it as Trustee hereunder, in the manner herein provided, and to do and perform such other acts as are herein specifically required by and of it.

FIFTEENTH: The Trust hereby created shall, in any event, cease and terminate upon the expiration of a period of twenty (20) years after the date of this Declaration, on which termination and upon full release of the Trustee

from any liability hereunder, and after payment in full of any and all charges, fees, expenses and advances of the Trustee, with interest thereon, any and all property remaining in this Trust shall be conveyed, assigned and transferred to the persons then lawfully entitled thereto.

SIXTEENTH: The Trustee is hereby given a first lien upon the entire trust estate as security for any sums advanced by it for the protection of said Trust Property, and for its compensation which is hereby fixed as follows:

(a) An acceptance fee of One Thousand Two Hundred and Fifty ($1,250.00) Dollars;

(b) The sum of $5.00 for each deed executed by it;

(c) The sum of $5.00 for each contract executed by it;

(d) The sum of $5.00 for each transfer of Beneficial Interest, to be paid by the transferror;

(e) On all moneys paid to the Trustee, for the service of receiving and disbursing, same as hereinbefore provided, five (5%) per cent;

(f) Closing fee Two Thousand Five Hundred ($2,500.00) Dollars;

(g) An additional reasonable compensation for any unusual, special or extraordinary services which the Trustee may render;

SEVENTEENTH: THIS TRUST shall not cease or terminate in any event until all of the costs, fees, expenses and advances, with interest, hereunder of said Trustee,

and all liabilities and damages incurred or sustained by said Trustee by reason of its acceptance and/or administration of this Trust, shall have been fully paid.

THE CONDITIONS and provisions hereof shall inure to and shall bind said Trustee, said Beneficiary, said Payee, their successors and assigns.

IN WITNESS WHEREOF, the said THE PACIFIC NATIONAL BANK OF LOS ANGELES, a National Banking Association, as Trustee, has caused these presents to be duly signed by its Vice President and Assistant Trust Officer, and has caused the seal of said THE PACIFIC NATIONAL BANK OF LOS ANGELES, to be hereunto affixed this First day of July, 1927.

THE PACIFIC NATIONAL BANK OF LOS ANGELES, a National Banking Association, Trustee

By sgd "A. M. DeLong,
Vice-President

By sgd "F. J. Renders".
Assistant Trust Officer.

WE, THE UNDERSIGNED, do hereby certify and declare that the foregoing Declaration of Trust No. P. T 46, correctly and accurately sets forth and declares the trust under and upon which said Property is held by said Trustee, and do also hereby agree to do, and do approve, ratify and confirm the same in all particulars; and the

undersigned Beneficiary does undertake in favor of the Trustee, and also in favor of the Payee, the strict and timely performance, and agrees to perform each and every promise, obligation and covenant assumed or undertaken or recited in the foregoing Declaration of Trust, to be or to have been performed, undertaken or agreed to by it, intending hereby to effect the execution of the foregoing instrument.

AND the undersigned Beneficiary also hereby transfers and conveys to said Trustee title to the Beneficial Interest thereunder for conveyance of said Interest, or part or parts thereof, in event of a sale as therein provided.

PACIFIC NATIONAL COMPANY, a corporation,
BENEFICIARY

sgd By "Fred Swensen"
(SEAL) Vice President

sgd By "F. W. Shelton"
Secretary.

.....
PAYEE.

Subscribed and sworn to before me this ..... day of ....., 1927.

.....
Notary Public in and for the County of Los Angeles, State of California

EXHIBIT "E"

AGREEMENT FOR THE SALE OF REAL ESTATE

THIS AGREEMENT, Made and entered into this ..... day of ..... 192...., Between THE PACIFIC NATIONAL BANK OF LOS ANGELES, a National Banking Association, the party of the first part, hereinafter sometimes designated the Seller, and .... whose residence and postoffice address is ..... the party of the second part, hereinafter sometimes designated the Buyer.

WITNESSETH: That the said Seller in consideration of the covenants and agreements on the part of the said Buyer hereinafter contained, agrees to sell and convey unto the said Buyer, and the said Buyer agrees to buy from said Seller all of that real property situate in the City of Culver City, County of Los Angeles, State of California, described as follows: Lot No. ..... of Tract No. 10078, as per map recorded in Book 141, pages 23, 24 and 25 of maps, in the office of the County Recorder of said County.

THE PURCHASE price mutually agreed upon is the sum of ..... Dollars ($.....) which the said Buyer agrees to pay to the said Seller in gold coin of the United States of the present standard of weight and fineness at the office of said Seller in Los Angeles, California, or at such other places as may be designated by the Seller, as follows, to-wit: The sum of ..... Dollars ($.....) upon the execution of this Agreement, the receipt whereof is endorsed hereon; and the balance of $..... in installments of $.....

each, due on the ..... day of each and every month, commencing ....., ... and continuing until the total purchase price, together with interest on all deferred payments, at the rate of seven per cent (7%) per annum, payable ....., is fully paid. Buyer may make larger payments or at more frequent intervals than those set forth above.

The Buyer agrees, during the term of this Agreement, or any extension or renewal thereof, to pay to the Seller all assessments and taxes of every kind and nature now or hereafter levied or assessed against said property, including street and other improvements, except as hereinafter provided, assessments, water rates, telephone rates, street lighting charges, electric lighting and gas charges, if any, which may be taxed, charged, assessed, levied or imposed upon said property, or upon any improvements thereon, or upon the estate hereby created, or upon the interest therein of any of the parties thereto; all such taxes, assessments and other charges to be paid at least ten days before the same become delinquent, including the ..... installment of City and County taxes for the fiscal year 192.... 192..... Upon failure so to do, the Seller shall have the right to pay the same, together with any and all costs, penalties and legal percentages which may be added thereto; and the amount so paid, with interest thereon, at the rate of seven per centum (7%) per annum from the date of payment until repaid shall be secured hereby and shall be repaid by said Buyer to said Seller on demand, and failure by the Buyer to repay the same, with such interest, within thirty (30) days after such demand by the Seller shall constitute a default under the terms of this Agreement.

IT IS UNDERSTOOD AND AGREED that the property above described has been inspected by the Buyer or the Buyer's duly authorized agent; that the same is and has been purchased by the said Buyer as a result of said inspection and upon the Buyer's own judgment, and not upon representation made by said Seller or any selling agent, and said Buyer hereby expressly waives any and all claims for damages by reason of any cancellation or foreclosure of this contract because of any representation made by any selling agent or person whatsoever other than is contained in this contract, and the said Seller shall not be responsible or liable for any inducement, promise, representation, agreement, condition or stipulation not set forth herein.

IT IS FURTHER AGREED that time is of the essence of this Agreement, and full performance by the Buyer of all of his obligations hereunder is and shall be a condition precedent to his right to a conveyance hereunder; and, should default be made in the payment of any of said installments of principal or interest when the same become due, or in the repayment on demand of any amount therein agreed to be repaid, or in the performance of any other obligation hereunder, then the whole unpaid balance of said purchase price and all advancements theretofore made, with the interest thereon, shall become immediately due and payable at the option of the Seller who may thereupon at its option, enforce its rights hereunder either by forfeiture of all the Buyer's rights under this Agreement and all interest in the lands described herein and the appurtenances as hereinafter provided, or by an action in equity or at law for specific performance with damages, or for the recovery of the

purchase price with interest; and nothing herein contained shall be construed as depriving the Seller of any legal or equitable right or remedy it may have in the premises; and no court of law, or equity shall relieve the Buyer upon failure to comply strictly and literally with the terms of this Agreement. The Buyer agrees to pay all costs and expenses of any action commenced by the Seller to enforce this Agreement, including attorney's fees, whether such action progress to judgment or not. If the Seller elects to enforce its rights of forfeiture hereunder it may do so by serving on Buyer, personally, or mailing to his last known address, a written declaration of said election. Upon said forfeiture all rights of the buyer or any person claiming under him shall terminate, and all equitable or legal interests in the premises, improvements and appurtenances shall revert to the Seller, without any rights in the Buyer for recovery of, or damages for, any money paid, services performed, or improvements placed on said land. And the money paid and improvement erected shall be forfeited to and be retained by said Seller, as liquidated damages for such default and not as a penalty, and the Seller shall have the right immediately upon any default in performance on the part of the Buyer to enter upon said premises and take possession thereof, with or without process of law. No waiver by Seller of a breach of any condition, restriction or agreement herein shall be deemed a waiver of any succeeding breach of the same or any other condition, restriction or covenant herein.

As soon as the Buyer shall have made said payments, including taxes and assessments, as aforesaid, if made within the time and manner aforesaid, and surrendered his duplicate original hereof, said Seller shall, and it does

hereby agree to convey or cause to be conveyed said premises to the said Buyer and to furnish a Certificate or Guarantee of Title of Security Title Insurance and Guarantee Company, showing title to said lands to be vested in the grantor named in said deed, free of incumbrance, made or suffered by said Seller at the date of said conveyance, except as herein mentioned. The liability to be shown in said guarantee shall not exceed said purchase price.

It is especially understood and agreed that said Buyer shall not place or maintain, or permit to be placed or maintained upon said premises any signs or billboards of whatsoever nature prior to the time that said purchase price is fully paid and deed executed hereunder, it being the desire of said Seller to do everything on its part to make said tract a clean and attractive subdivision and that the beauty of said tract shall not be marred by any signs or billboards of any nature or description.

This agreement is made by the Seller and executed by the Buyer subject to the conditions, restrictions, reservations and easements hereinafter recited, which it is hereby agreed shall apply to said land as well before the execution and delivery of said deed by the said Seller as after said deed has been executed and delivered, and shall also be written in and become a part of said deed. Said conditions and restrictions substantially are in the words and figures following, to-wit:

"This property is conveyed by said first party and the said conveyance is accepted by said second party subject to conditions, restrictions, reservations and easements now of record and the following conditions and covenants,

which shall apply to and be binding upon the said party of the second part, his heirs, devisees, executors, administrators and assigns, and shall be construed and enforced both as covenants running with the land and as conditions, namely:

"A". That lots 1 to 111, both inclusive, of said Tract No. 10078, are hereby designated as business lots and may be used for all lawful purposes except as hereinafter stated (it being understood that no manufacturing may be carried on, on said lots), provided, however, that any building erected on any of said lots 1 to 59, both inclusive must be neat and attractive in appearance and must cost and be fairly worth at time of construction not less than $3500.00, that any building erected on any of said lots 60 to 111, both inclusive must be neat and attractive in appearance and must cost and be fairly worth at time of construction not less than $2500.00. Every such building, except for automobile service stations, erected on any of said lots must be of cement, stucco or brick construction, and must be built flush with the front property line of such lot. That the design for the exterior of all buildings to be erected or constructed on said lots 1 to 111, both inclusive shall be submitted for approval to an architectural committee to be appointed by the Grantor.

"B". That lots 112 to 166, both inclusive shall be used for single family residence exclusively and such residence erected thereon shall be fairly worth not less than $3500.00, and shall face the front line of said lots, and shall be located not less than 20 feet from the front line thereof.

Lots 167 to 225, both inclusive, and lots 333 to 402, both inclusive, shall be used for single family residence exclu-

sively, and such residence erected thereon, shall be fairly worth not less than $4000.00, and shall face the front line of said lots, and shall be located not less than 20 feet from the front line thereof.

Lots 226 to 232, both inclusive, lots 245 to 269, both inclusive, lots 273 to 282, both inclusive, lots 287 to 311, both inclusive, and lots 326 to 332, both inclusive, shall be used for single family residence exclusively, and such residence erected thereon, shall be fairly worth not less than $5000.00, and shall face the front line of said lots, and shall be located not less than 20 feet from the front line thereof.

Lots 233 to 244, both inclusive, lots 270 to 272, both inclusive, lots 283 to 286, both inclusive, and lots 312 to 325, both inclusive, shall be used for single family residence exclusively, and such residence erected thereon, shall be fairly worth not less than $6000.00, and shall face the front line of said lots, and shall be located not less than 20 feet from the front line thereof.

Lots 403 to 477, both inclusive, shall be used for residence or residential income purposes only, and any dwelling erected thereon shall cost and be fairly worth not less than $4000.00 for single family residence; $7500.00 for double bungalow and/or duplex, and shall face the front line of said lots, and shall be located not less than 20 feet from the front line thereof.

"C". That no temporary dwellings of any description whatsoever, including garages or any outbuildings used for residence purposes, shall ever be constructed or occupied for residence purposes upon said premises.

"D". That no house or other building shall ever be moved on to any lot in said tract without the written permission of said first party, its successors or assigns, and of owners of all adjoining or abutting property, which said written permission must be duly recorded with the County Recorder of Los Angeles County before it shall be effective.

"E". That there is reserved to said first party for the benefit of all property owners in said tract the right to permit any public utility company or municipality to erect and maintain along, over or under the rear seven and one-half feet of said premises, poles and wires, pipes and conduits for the purpose of conveying electricity, water, gas, sewer and telephone lines.

"F". That no gravel or top soil shall ever be removed or sold from said premises in commercial quantities, but that if deemed by said seller desirable for the improvement and beautification of said tract, it may grade any street or lot in said tract by removing from or placing upon the same earth so as to bring the same to such grade as shall in seller's judgment conform to the general plan of said tract.

"G". That no lot in said tract nor any part thereof shall ever at any time be used or occupied or permitted to be used or occupied or leased or rented to any person not entirely of the White or Caucasian race, except that persons of other races may occupy or use such portions of said premises as may be necessary in the proper discharge of duties as household servants actually employed by the family entitled to occupy said premises; and except that any of said business lots may be rented, leased or sublet,

in whole or in part, to persons of other races for the purpose only of establishing or conducting a legitimate business upon any of said business lots, and provided that such persons of such other races shall never at any time use or occupy any of said business lots to any extent whatever for residence purposes.

"H". That no part of said premises shall be used for the manufacture or sale of intoxicating liquors.

"I". Provided that each and every one of the conditions, restrictions, reservations and easements herein contained as above set forth shall be perpetual and binding forever upon the parties hereto, their heirs, executors, administrators, successors or assigns, except only paragraphs "A" to "D", both inclusive, hereof, which shall in all respects terminate and end and be of no further effect, either legal or equitable, on and after January 1, 1953.

PROVIDED, FURTHER, That a breach of any of the foregoing conditions, either directly, or under some evasive guise, shall cause said premises to revert to the grantor herein, its successors or assigns, each of whom respectively shall have the right of immediate re-entry upon said premises, in the event of any such breach; and, as to the owner of any other lot in said tract the foregoing restrictions and conditions shall operate as covenants running with the land, and the breach of any such covenant, or the continuance of any such breach may be enjoined, abated or remedied by appropriate proceedings by the grantor herein, its successors or assigns (including contract purchasers of other lots in said tract), or by any such owners, their heirs, devisees, executors, administrators, successors or assigns, but by no other person. No

delay of grantor or said owners in exercising their rights hereunder in case of such breach shall be deemed as a waiver of such rights.

PROVIDED, ALSO, That a breach of any of the foregoing conditions, or any re-entry by reason of such breach, shall not defeat or render invalid the lien of any Mortgage or Deed of Trust made in good faith, and for value, as to said premises or any part thereof; but said conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired, by foreclosure, trustee's sale, purchase, devise, inheritance or otherwise.

The Buyer agrees not to transfer or assign this contract, or any interest herein, without the written consent of the Seller first having been secured to such proposed assignment, and agrees to pay the Seller the usual fee of Two Dollars Fifty Cents ($2.50) for each assignment, together with all interest and payments due to date of such consent. No such assignment shall be valid or effective as against said Seller until such written consent of Seller is endorsed on Buyer's duplicate original hereof.

It is understood and agreed and it is a part of the consideration hereof, that this contract shall not be recorded, and in the event that the same is recorded Buyer agrees to pay all charges of said Title Company for Certificate or Guarantee of Title occasioned by such recording.

The term "Buyer," wherever used in this Agreement, shall include the plural as well as the singular number,

and the masculine and feminine, as well as the neuter gender.

Each and all of the various rights, powers, options and remedies of said Seller contained in this agreement shall be construed as cumulative and not one of them as exclusive of any other or others or as exclusive of any remedy or remedies allowed by law.

Each and every one of the conditions, restrictions, covenants and agreements contained herein shall inure to the benefit of and/or bind (as the case may be) the heirs, executors, administrators, devisees, successors, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the said Seller and said Buyer have executed this Agreement in duplicate the day and year first above written.

THE PACIFIC NATIONAL BANK OF LOS ANGELES

Attest.....

Vice-President.

Attest.....

Assistant Trust Officer

Seller

.....

.....

Buyer

ASSIGNMENT

FOR VALUE RECEIVED I do hereby grant and assign to.....; the foregoing contract, of which I hereby certify I am the true and lawful owner, and all my right, title and interest in and to the property therein described, this.....day of ....., 192.....

.....

.....

ASSIGNEE'S ACCEPTANCE

The undersigned assignee named in the foregoing assignment hereby accepts said assignment, and assumes and agrees to perform all the terms, covenants and conditions thereof, and promises to pay the balance of said purchase price as therein provided, this.....day of ....., 192.....

Signature.....

Signature.....

Address.....

OWNER'S CONSENT

We hereby consent to the foregoing assignment, without obligation on us to its validity, this.....day of ....., 192.....

THE PACIFIC NATIONAL BANK OF LOS ANGELES

By.....

Vice-President

Attest .....

Assistant Trust Officer

TESTIMONY OF E. C. MAEDER FOR PLAINTIFF

E. C. Maeder, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is E. C. Maeder. I am the Secretary of Pacific National Company. Plaintiff owns the claim against the Government for the refund of 1928 Federal Corporate income taxes in the amount of $9,669.89.

CROSS EXAMINATION

I refer to the claim for refund filed about April 1, 1932. I became Secretary of the Corporation in April, 1932.

REDIRECT EXAMINATION

I am somewhat familiar with the claim for refund of Federal taxes for 1928, filed by Plaintiff on or about February 26, 1931. The Plaintiff has not, to my knowledge, assigned any interest in the 1928 claim, but still owns both claims.

RECROSS EXAMINATION

I have gone over the records of Plaintiff and there have been no assignments of income tax refunds. There have been no such assignments since April, 1932. There was no assignment of any claim for refund.

REDIRECT EXAMINATION

I have not gone back over the entire records of Plaintiff since its inception. I am not familiar with the assignment made by Plaintiff of various assets to Transamerica Corporation.

(Testimony of F. W. Shelton)

RECROSS EXAMINATION

There were some assignments of assets on December 23, 1931, when Plaintiff made a settlement with the Bank of America. That assignment did not carry with it the claim for refund of income taxes filed about the 25th day of February, 1931. I checked that particular account and there was no assignment of any claim for refund of taxes.

TESTIMONY OF F. W. SHELTON
FOR PLAINTIFF

F W. Shelton, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is F. W. Shelton. I was secretary of the Pacific National Company from about 1926 to 1930. As secretary I had charge of its books. I kept the books on the cash basis. I prepared the 1928 income tax return of the Plaintiff.

My experience in income tax matters was limited to the preparation of the return of the Plaintiff for several years. In 1928 I was 26 years old. I did not have any advice, assistance or instruction from any of the Company officials in preparing the 1928 return. I did not have any advice, instruction or information from outside income tax experts, or other outsiders.

In the 1928 return of Plaintiff, I included $137,007.17 as being income of Trust No. P. T. 46, Pacific National Bank, Trustee. A copy of the 1928 Return was introduced in evidence as Plaintiff's Exhibit No. 1.

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(Testimony of F. W. Shelton)

The Company purchased a piece of property at Culver City. The land was conveyed to the Pacific National Bank as Trustee and subdivided and streets laid out. The cost of the tract was allocated over the lots on the basis of expected selling prices of the lots. The cost of the improvements was allocated over the lots by the same method. When the lot was sold the profit was arrived at by deducting from the selling price the cost of the lot, the improvement and the commissions. In computing the income of the Trust for 1928, I treated the sales contracts as being equivalent to cash. Most of the contracts were sold on the basis of 25 per cent down and the balance over a period of time.

I did not know that the 1928 Revenue Act permitted sales to be reported on the installment basis when 25 per cent of the selling price was received in the year of sale. I understood that the sale had to be treated as a cash sale or a completed sale. I got this impression from looking at some Regulation book.

I did not know that the law permitted reporting sales contracts at their fair market value.

I did not know that where the down payment exceeded 40 per cent the law permitted the collections to be treated as return of capital until the cost had all been collected, and to treat the subsequent collections as all income.

In calculating the income of the Trust for 1928, I included the sales that were made in 1927.

The existence of net loss to Plaintiff for previous years, amounting to about $35,000, and which I deducted in the

(Testimony of F. W. Shelton)

1928 return, did not determine the method which I used in reporting the income of this Trust in the 1928 return.

Q Mr. Shelton, are you familiar with the sales methods used by Frank J. Brick in selling the lots in trust P. T. 46?

MR HARPOLE: Objected to as immaterial and outside the issues in the claim for refund.

MR. WILSON: My purpose, your Honor, is to show again that this taxpayer should be relieved from an election by reason of the fact that the method of reporting did not clearly reflect income. I want to show there were sales made, with very large commissions, and at high-pressure methods, and it is not good accounting to treat those contracts as the cash value equal to the face value.

THE COURT: Isn't Mr. Brick here?

MR. WILSON: We haven't him. This witness is familiar with his methods of doing business.

MR. HARPOLE: Your Honor, I believe this evidence is not proper under the theory that the contracts are not of their face value. The Supreme Court of California laid down a rule in one of the cases, and the reason for that rule was to prevent going into the details of what such sales agent said, and all the surrounding circumstances that can only be asked on cross examination.

THE COURT: I think I know the rule that you have in mind. But I want to know now whether the objection goes to this as being secondary proof, when there is better.

MR. HARPOLE: No, I did not have that in mind.

THE COURT: Is it the Government's position that on this line of evidence the taxpayer must introduce evi-

(Testimony of F. W. Shelton)

dence to show that the land sold had certain market value?

MR. HARPOLE: I don't believe the land value has any place in here at all, other than perhaps if we go to the place where we are considering the security behind the contracts. The contracts are the proper thing to be valued, if anything, and I think this is immaterial.

THE COURT: Objection overruled.

MR. HARPOLE: Exception.

(Question read by the Reporter.)

THE WITNESS: He generally used what we call the lunch and lecture methods. He had a lecture hall out there and gave lectures and gave lunches each day.

BY MR. WILSON:

Q Do you know if Mr. Brick had a large force of salesmen?

A I don't know how many he had.

Q Do you know if the asking price of those lots was increased from time to time during Mr. Brick's campaign?

A On some of the lots, yes.

CROSS EXAMINATION

The Pacific National Company was originally incorporated with a capital stock of $2,000,000. It was more or less of a holding company for stocks of various banks. It increased its capitalization in 1928 I believe, to $4,000,000.

I was originally employed by the Pacific National Bank. I started as a bookkeeper there in 1924 and was with the

(Testimony of F. W. Shelton).

Bank until the time of its sale to the Bank of America. The Pacific National Company was formed as a holding company for stocks of Pacific National Bank and several other Banks, and the officers of the Company were officers of the Bank. Prior to accepting the position as bookkeeper with the Pacific National Bank, I was a teller for about two years with the California Bank. I had a high school education.

As Secretary of Pacific National Company, I kept their records. I prepared the 1926 and 1927 income tax returns. I was familiar with the rule or regulation of the Bureau of Internal Revenue that returns should be prepared and income reported on the basis of the method used in keeping the books of the reporting company. The 1928 return of Plaintiff was made from its books.

On August 20, 1928, I set up on the books of Plaintiff the cost of the property in the Trust less the lots that had been sold to date. I increased the cost on the books of Plaintiff for assessments of gas and water improvements.

The general ledger of Pacific National Company, for 1928, shows a gross profit on the sale of real estate of $306,181.69; commissions paid of $182,711.49; expense on Speedway property of $4,044.56. These figures related to the activities of Trust No. P. T. 46. The item of Three Hundred and odd Thousand Dollars is the proceeds from the property in Trust No. P. T. 46. The Plaintiff, during the year 1928, carried that entry in its own profit and loss account in its regular set of books, and the 1928 return was prepared from those books.

REDIRECT EXAMINATION

The Pacific National Company did not, in 1928, receive any cash from Trust P. T. 46. In fact the Pacific National Company put some money, about $50,000, into the Trust to enable the Trust to reduce its mortgage.

The Trustee kept books of the activities of Trust No. P T. 46. The Trustee gave the Pacific National Company data on the activities of the Trust. From this data I made the entries in the Plaintiff's ledger.

I know Walter G. L. Smith. I recognize his signature on the document now being shown to me. He was connected with the Pacific National Company at one time. That is his signature.

MR. WILSON: I would like to offer this in evidence and have it marked.

THE CLERK: Plaintiff's Exhibit 2 for identification.

MR. HARPOLE: I object to the offer of Exhibit 2 in evidence for the reason it is immaterial. The transaction took place long subsequent to the taxable year involved.

MR. WILSON: That has a bearing on the case in two respects. There was an assignment of many assets of the Plaintiff to the Transamerica Corporation, but it expressly excludes from the assignment this claim for refund Furthermore, it is part of the evidence showing that the Plaintiff lost its entire investment in the beneficial interest of this trust, which I think has some bearing on the case.

THE COURT: The instrument purports to transfer and assign, in subdivision F, of paragraph 1: "The bene-

(Testimony of F. W. Shelton)

ficial interest of first party in two trusts set forth and described in Schedule 5 attached hereto and expressly made a part hereof." Schedule 5 sets forth two trusts known as P. T. 10 and S.1542.

MR. WILSON: Your Honor, that can be explained by testimony to show that the Title Guarantee & Trust Company became the trustee of this trust, and gave the latter number to it at that time.

THE COURT: Objection overruled.

MR. HARPOLE: Please note an exception.

THE CLERK: Plaintiff's Exhibit 2 in evidence.

(Whereupon the document referred to was received in evidence and marked "Plaintiff's Exhibit No. 2.")

The Pacific National Company kept a record of the costs, sales price, expense and gross profit of the land included in Trust No. P. T. 46. I made the 1928 return of Plaintiff entirely from the records of Plaintiff.

The Title Guarantee & Trust Company subsequently became the Trustee of Trust P. T. 46.

On Plaintiff's books all of the accounts dealing with the cash or property or activities of Trust P. T. 46, refer to the fact that the items were Trust items.

I set up the books for Plaintiff. I had no directions about setting them up. I used my own knowledge and experience in setting up the various accounts. I had no instructions from the officers or directors of the Bank

(Testimony of C. W. Sanders)

during the progress of the keeping of the general ledger. I had no consultant advise in the preparation of the 1928 return. I had no advice from the officers of the Bank or any other persons interested in the Trust, relative to the preparation of the 1928 return.

RECROSS EXAMINATION

Either the Pacific National Company or the Trustee employed Mr. Elwell and Mr. Brick to sell lots from the subdivision Trust. The commissions were paid out of the Trust. The accounts of the Plaintiff show the commissions paid by the Trustee.

TESTIMONY OF C. W. SANDERS FOR PLAINTIFF

C. W. Sanders, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is C. W. Sanders. I am employed by the Security First National Bank of Los Angeles. I am head of the Income Tax Division of that Bank. I have been with the Bank in that capacity since 1921; that is the Security Trust & Savings Bank. The Security First National Bank at one time was Trustee for about 500 subdivision Trusts. In connection with my work I handled a good deal of the tax work for those subdivisions. I had entire charge of that work.

Ordinarily, the Trustee refused to sign contracts of employment with the sales agent. Such contracts were usually signed by the beneficiaries or a committee of the beneficiaries.

(Testimony of William H. Elwell)

CROSS EXAMINATION

I have never been employed by any other Bank or Trust Company of the City of Los Angeles. I have never seen any contracts for the employment of sales agents for subdivision Trusts, for any other Trusts than those handled by the Security First National Bank of Los Angeles. It was the practice of that Bank to require the sales agency contracts to be executed by the beneficiaries.

TESTIMONY OF WILLIAM H. ELWELL FOR PLAINTIFF

William H. Elwell, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is William H. Elwell. I am engaged in the real estate business. I have been engaged in that business twenty-seven years; around Los Angeles all of that time. I have had experience in subdivisions of real property.

I had some contact with the Culver City Park Tract known as Trust No. P. T. 46, Pacific National Bank, Trustee.

One of the officials of the Pacific National Bank asked me to make an estimate of what the Culver City Park Tract could be sold for. He gave me the dimensions of the property and I drew a tentative map and set prices on it which would exceed a certain amount of money which he said the Bank wanted to get. I made this tentative map of the prices; I had sign boards painted with

some advertising matter on them, and a sales force partly organized. The Bank official then informed me that he had made a mistake, that some of the property he supposed was included in the subdivision really was leased land and belonged to another party; that the Bank's land did not include the entire race track as he had supposed.

The Bank wanted me to raise the prices so that it could get the same amount of money out of the reduced area as it had figured on getting out of the larger area. I did not care about going on with the matter any further as I did not think the lots would sell at higher figures than I had originally estimated and it would not make a profitable venture for me. The Bank had a loan and had to have enough money to pay this off with, of course, costs of sale.

My first schedule of prices for residential lots was eight or nine hundred dollars, or a thousand dollars per lot. The business lots I priced at $75.00 a foot on the main boulevard.

I wrote a letter to the Pacific National Bank outlining a sales campaign and commissions payable. I was employed to conduct the campaign along the lines of the letter. (The letter was introduced in evidence as Plaintiff's Exhibit No. 3).

I agreed to increase the sales prices of the lots so as to return to the Bank the same amount of money that they had hoped to get from a larger area. I attempted

to sell lots under that higher sales schedule. I did sell a few lots.

Frank J. Brick heard that I did not care about going ahead with the subdivision and asked the Bank for the sales agency. The Bank asked me if I thought he would be a good man and I said I thought perhaps he could sell the lots by using high pressure methods, such as the lunch and lecture system.

The Bank then agreed to employ Mr. Brick and to give me a one per cent overriding commission on sales made by Mr. Brick.

Mr. Brick gave free lunches and had lectures delivered to prospective lot buyers. The lecturers elaborated upon conditions; sometimes, in my opinion, they were not truthful. Mr. Brick was reported to have used high pressure closers.

I received about $1,600, all told, as overriding commissions on Mr. Brick's sales. Mr. Brick was to receive all of his commissions and I was to get the last one per cent. The $1,600 I received did not represent one per cent of the total sales made during the term of his contract. So many buyers canceled their purchase contracts and failed to make their payments that I did not get as much of the overriding commissions as was due me.

Mr. Brick sold the lots for prices which were two or three times as high as the prices I thought the lots would sell for.

I do not think that the contracts with buyers were worth their face value. I think that the contracts had a fair

market value of one-third to one-half of the selling prices. The fair market value of the contracts at the time they were executed would, of course, be reduced by the cash payments made by the buyers.

I am not interested in the outcome of this case, either by virtue of any contractual relationship that would be affected by a decision in this case, or otherwise.

The Plaintiff and Defendant, through their respective counsel, entered into the following oral stipulation which was accepted by the Court:

MR. WILSON: If your Honor please, we have a verbal stipulation. Will you assist me in dictating this, Mr. Harpole?

MR. HARPOLE: May it please the Court, the defense is agreeable to a stipulation to the effect that should the Court decide either that the plaintiff is entitled to change its method of computing income from the completed sale basis to the installment or deferred payment sale basis, or it should be decided that the trust should have reported the income on the basis of an association taxable as a corporation, and should have filed a separate return as a corporation instead of as a trust, that there would be some amount of refund due. They have reserved the right to endeavor to compute that without taking time now.

THE COURT: Yes.

MR. HARPOLE: And further, that if a change of basis was granted, that no income would escape taxation in subsequent years by reason of the Statute of limitations; I do not wish the stipulation to be taken as abandoning our contentions as to the right to change the basis.

TESTIMONY OF HARRY KAHAN FOR PLAINTIFF

Harry Kahan, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

My name is Harry Kahan. I am a Certified Public Accountant under the laws of California. About 1930, I audited the books of Pacific National Company. I prepared the Claim for Refund for Plaintiff which was filed February 26, 1931.

The books of the Pacific National Company, which were kept by Mr. Shelton, were kept strictly on the cash basis in a method which is used mostly by Banks. Entries were made in a great number of cases direct to the ledger without having intermediate steps.

I compiled from the records of the Trustee of Trust No. P. T. 46, Pacific National Bank, Trustee, for the year 1928, a summary of the condition of the contracts for the sale of lots of the Trust.

I examined the terms of the contracts of sale and the payments under those contracts, and this is the finding as to those that were in good standing and paid up as of December, 1928, and those that were delinquent at that date.

I believe that Exhibit 9, which I have prepared, is a true and correct summary of the condition of the contracts at the end of 1928.

The Plaintiff offered the Exhibit in evidence. The Defendant objected on the ground that the Exhibit was wholly immaterial and not pertinent to any issue in this case, and not based upon any Claim for Refund filed

(Testimony of Harry Kahan)

within the statutory period, and on the further ground that it was not the best evidence; that the books were the best evidence. Further, that the Exhibit does not have anything to do with the corporation which has elected to report on the completed sales basis; the time for changing that basis has expired. The Court overruled the objection and the Defendant took an exception. The summary was introduced into evidence as Plaintiff's Exhibit No. 9.

I prepared, or had prepared in my office under my supervision, a summary of information taken from the books and records of Trust P. T. 46, and I believe that this is a true and correct summary of the facts found in those books. The Witness referred to Plaintiff's Exhibit No. 10. Plaintiff offered the Exhibit No. 10 in evidence; the Defendant objected and the following colloquy occurred:

MR. HARPOLE: May I enter and reiterate an objection? I am running a risk of being tedious in making the same objection over and over again as to immateriality, but I call attention to the fact that there is no claim for refund on file asserting that the contracts were not worth face value. That was not made an issue in the two refund claims. The first refund claim, which is attached to the amended complaint, made an issue of the question of changing from the installment to the completed sale basis, and the second one made an issue of the question of changing from a trust to an association basis.

MR. WILSON: Of course, your Honor, I think that it goes to the question of alleviating circumstances that will relieve a taxpayer from the election that the various courts have held are good grounds for relieving from that

(Testimony of Harry Kahan)

election. These are expert accountants that prepared this, and I thought it would be more authentic if they did it.

THE COURT: I think we will receive the evidence. I will overrule the objection tentatively, subject to the same reservation that was made at the beginning.

THE CLERK: Plaintiff's Exhibit 10.

MR. HARPOLE: Exception.

(Whereupon the document referred to was received in evidence and marked "Plaintiff's Exhibit No. 10.").

BY MR. WILSON:

Q Mr. Kahan, do you recognize these papers?

A Yes, I do.

Q What are they?

A Photostatic copies of fiduciary income tax returns for the year 1928 for Culver City Speedway Trust No. 46, Pacific National Bank of Los Angeles, Trustee, under its private trust No. 46, Bank of America successor in interest.

Q And the other one?

A This is a similar photostatic copy, only for the year 1927.

MR. WILSON: It has been stipulated, your Honor, that the originals of these were filed with the Collector on January 3, 1935, and I would like to offer these in evidence.

MR. HARPOLE: The exhibits are objected to, your Honor, as being immaterial, particularly that they relate to a transaction that took place long after this action was filed in court, and it was at issue originally. Further than

(Testimony of Harry Kahan)

that, there are—these are immaterial for the reason an election was made when the original return was filed by the plaintiff, reporting the income from the trust as its own.

MR. WILSON: I think they are material, your Honor, for the reason that under the law the trustee of every trust has an obligation to keep books and file returns, and are permitted to choose their own methods of keeping books and filing their returns, and the trustee of this trust never filed returns for these two years until 1935, and I think it is admissible to show what type of return they filed at that time.

MR. HARPOLE: That is one of the questions before your Honor in this case, as to whether the trustee has the right to elect to file a return of that type.

THE COURT: I don't see how the filing of a return after the issue is joined in this case throws any light on the matter here. If there had been any returns filed before the issue was joined, then probably it would be admissible; it might be helpful in the solution of the problem. How can what they did after the suit was at issue help us?

MR. WILSON: Of course, your Honor, the election that the Government argues is on the seller of the real estate; that was the trustee; the plaintiff did not sell the real estate and there was no election with respect to the way it shall treat its share of the distribution of the trust. I don't think any election could have been made by or for this trust until it made it itself.

THE COURT: It is your contention, then, or will be, that these two exhibits which you are now offering constitute the election?

MR. WILSON: Yes, your Honor.

(Testimony of Harry Kahan)

THE COURT: I am not saying that that finally will be sustained or will not be sustained, but the objection will be overruled.

MR. HARPOLE: Exception.

THE CLERK: Plaintiff's Exhibit 11.

(Whereupon the documents referred to were received in evidence and marked "Plaintiff's Exhibit No. 11.")

I am familiar with a contract that was made by Plaintiff in 1929 to sell stock it owned in the Pacific National Bank to Transamerica Corporation. I have recently looked in my office, and in the Plaintiff's office, for that contract, or a copy of it, but I have not been able to find it.

By the terms of that contract the Bank of America agreed to buy the stock of the Pacific National Bank which was owned by the Pacific National Company. The Pacific National Company at that time owned over 80 percent of the stock of the Pacific National Bank. The Bank of America, at the same time, made agreements with the minority stockholders to purchase their stock of the Pacific National Bank, and to take over the Pacific National Bank with a guarantee by Plaintiff of all the assets of the Pacific National Bank. In return the Bank of America gave some 65,000 shares of Transamerica stock to Plaintiff, which stock was to be held in escrow until such time as the guarantee would be satisfied. The guarantee period was for one year, and at the end of the year there was an extension made of a year.

I am familiar with Plaintiff's Exhibit No. 2, being a contract dated December 23, 1931, between Plaintiff and Transamerica Corporation. Under this contract the Plain-

tiff assigned to Transamerica Corporation, under the guarantee contract made in 1929, many of the assets of Plaintiff; among other things, it transferred to Transamerica Corporation Plaintiff's beneficial interest in Trust P. T. 46. At that time, December 23, 1931, there was still an encumbrance on the property of Trust No. P. T. 46. This encumbrance exceeded $100,000.

As of December 31, 1928, there was owing to Pacific National Bank, as Trustee of Trust No. P. T. 46, by buyers of lots who made down payments of less than 40 per cent of the selling price, $489,974.

CROSS EXAMINATION

In my practice as a Certified Public Accountant, I have frequent occasion to file claims for refund of Federal taxes. I am familiar with Form 843, form for refund claims. Those forms are filed with the Collector of Internal Revenue in the District in which the return has been filed. After the claim is filed, a Revenue Agent ordinarily investigates the claim and either recommends the allowance or rejection of the claim.

The Plaintiff filed a claim for refund of 1928 taxes with the Collector of Internal Revenue, about February 21, 1931. I prepared the claim. That claim advanced the contention that the Plaintiff should be permitted to change its method of reporting income from lot sales from the completed transaction to the installment basis.

An additional or amended claim was filed by the Plaintiff for the same year. Mr. Wilson's office prepared and filed the amended claim.

Plaintiff was the sole beneficiary of Trust No. P. T. 46, Pacific National Bank, Trustee, during 1928.

(Testimony of Harry Kahan)

During 1928, the Plaintiff owned 80 per cent or more of the stock of Pacific National Bank, the Trustee of Trust No. P. T. 46.

Q Now, let us turn to the relationship between this Plaintiff with the Pacific National Bank, Trustee of P. T. 46 during the year 1928 and subsequently; the Plaintiff, Pacific National Company, was the sole beneficiary of trust P. T. 46, of which the Pacific National Bank was trustee, was it not?

A Yes, it held the entire beneficial interest.

Q And it also, to all practical purposes, owned the trustee of trust P. T. 46?

MR. WILSON: Objected to as a conclusion of the witness.

MR. HARPOLE: Withdraw the question.

Q During the year 1928 it is a fact, is it not, that the Pacific National Company owned eighty per cent or more of the stock of the Pacific National Bank?

A That is right.

Q The trustee of P. T. 46?

A Yes.

Q Then it is a fact that this Plaintiff, Pacific National Company, in 1928 was the sole beneficiary of Trust P. T. 46, and was the owner of at least eighty per cent of the stock of the trustee of that trust?

A That is right.

(Testimony of Harry Kahan)

MR. HARPOLE: For the purpose of the record, I wish to move to strike plaintiff's exhibits 4 to 11 inclusive, on the ground that they are immaterial and irrelevant.

THE COURT: The motion is denied with the reservation of vacating the ruling later.

MR. HARPOLE: May an exception be reserved in the event of a final unfavorable ruling?

THE COURT: It may.

MR. HARPOLE: That is all.

(Witness excused.)

MR. WILSON: I would like to offer in evidence a letter from the Treasury Department, addressed to a member of my firm, dated July 17, 1928.

MR. HARPOLE: That is objected to as immaterial; it is the case of another taxpayer entirely, and simply corresponds about another tax problem.

MR. WILSON: Your Honor, I offer that as an unpublished ruling of the Commissioner, supporting our theory that no one but a trustee can file a return which will bind the trustee, and if anyone attempts or purports to do so, the trustee can file a return and the Commissioner will accept it.

MR. HARPOLE: The ruling is not purported to be signed by the Commissioner, but by a deputy, and in the

absence of some explanation I don't think the deputy can publish a binding ruling.

MR. WILSON: I think this is one of the cases which recognizes that where the Commissioner is absent, a deputy might act.

THE COURT: Objection overruled.

MR. HARPOLE: Exception.

THE CLERK: Plaintiff's Exhibit 12.

(Whereupon the document referred to was received in evidence and marked "Plaintiff's Exhibit No. 12.")

MR. WILSON: Plaintiff rests, your Honor.

MR. HARPOLE: At this time I wish to file a motion for judgment, written motion in behalf of the defendant.

(Handing same to the Court.)

THE COURT: The motion for judgment at this time is denied, without prejudice.

MR. HARPOLE: May I reserve an exception to the denial, in the event of a final adverse ruling?

THE COURT: Yes.

MR. HARPOLE: The defendant rests, and requests the Court for special findings of facts and conclusions of law.

MR. WILSON: Plaintiff moves for judgment, and special findings of fact also, your Honor.

EXHIBIT 1

Form 1120 Page 1 of Return

U. S. Internal Revenue
(Auditor's Stamp)

CORPORATION INCOME TAX RETURN
For Calendar Year 1928

File This Return with the Collector of Internal Revenue for Your District on or Before March 15, 1929

PRINT PLAINLY CORPORATION'S NAME AND BUSINESS ADDRESS

PACIFIC NATIONAL COMPANY
(Name)

855 SO. HILL ST
(Street and number)

LOS ANGELES, CALIF.
(Post office and State)

Date of Incorporation 1925

Under the Laws of what State or Country California

Kind of Business Investment Holding Co.

Is This a Consolidated Return of Two or More Corporations? No

Item and Instruction No.	GROSS INCOME	
* * * * *		
5.	Interest on Bank Deposits Notes, Mortgages, and Corporation Bonds.....	44 893 09

6.	Rents	5 023 11	
	* * * * *		
8.	Profit from Sale of Real Estate, Stocks, Bonds, and Other Capital Assets (From Schedule B)	317 678 55	
9.	Dividends on Stock of Domestic Corporations	90 925 50	
10.	Other Income (including dividends received on stock of foreign corporations). (State nature of income):		
	(a) Commissions	2 715 00	
	(b) Sale of Oil	21 671 40	
11.	Total Income in Items 3 to 10		$482 906 65

DEDUCTIONS

	* * * * *		
15.	Interest	$ 36 157 82	
16.	Taxes (From Schedule E)	6 643 34	
	* * * * *		
19.	Dividends (From Schedule H)	90 925 50	
	* * * * *		
22.	Other Deductions Not Reported Above. (Explain below, or on separate sheet):		
	(a) Salaries and wages. (Not included in Item 2, 12, or 14 above)	14 908 36	
	(b) Net Loss for prior year. (Submit schedule)	35 849 46	

	(c) Commissions paid on sale of Real Estate Subdivision Culver City Cal.....	182 711 49	
	(d) Oil Royalties paid 3315.24 Repairs & expense on Oil Lease $12620.38	15 935 62	
	(e) Stationery, Postage and miscellaneous office expense, legal fees	9 196 76	
	(f) Lighting assessments & Insurance.....	900 96	
23.	Total Deductions in Items 12 to 22.....		$393 229 31
24.	Net Income (Item 11 minus Item 23).....		$ 89 677 34

COMPUTATION OF TAX

25.	Net Income (Item 24 above).....	$ 89 677 34
26.	Less Credit of $3,000 (for a domestic corporation having a net income of less than $25,360)	
27.	Balance (Item 25 minus Item 26).....	$ 89 677 34
28.	Income Tax (12% of Item 27).....	$ 10 761 28
29.	If the Net Income of a Domestic Corporation is less than $25,360, enter the amount in excess of $25,000.....	
30.	Total Tax (Item 28 plus Item 29).....	$ 10 761 28

* * * * *

33.	Balance of Tax (Item 30 minus Items 31 and 32)	$ 10 761 28

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

SCHEDULE K—BALANCE SHEETS

(See Instruction 43)

Items	Beginning of Taxable Year Amount	Beginning of Taxable Year Total	End of Taxable Year Amount	End of Taxable Year Total
ASSETS				
1. Cash		$ 18 269 96		$ 77 990 84
2. Notes receivable		114 745 27		903 361 47
* * * * *				
8. Capital assets: Land		166 599 55		792 485 01
* * * * *				
11. Other assets (describe fully): Investment in Stocks	$2 113 070 76		$4 188 799 32	
		2 113 070 76		4 188 799 32
12. Total Assets		$2 412 685 54		$5 962 636 64
LIABILITIES				
13. Notes payable		$ 559 175 00		$ 996 378 80
* * * * *				
16. Other liabilities (describe fully): Real Estate Mortgages & Contracts Payable			285 655 00	$ 285 655 00
17. Capital stock: Preferred stock (less stock in treasury)	$		$	
Common stock (less stock in treasury)	1 717 600 00	1 717 600 00	4 000 000 00	4 000 000 00
18. Surplus	$ 171 760 00		$ 600 000 00	
19. Undivided profits	35 849 46	135 910 54	80 602 84	680 602 84
20. Total Liabilities		$2 412 685 54		$5 962 636 64

Remarks: Balance of original authorized capital of 2,000,000.00 paid in during year plus $10.00 per share for surplus. Authorized capital increased to $4,000,000.00 which was paid in during year 1928 plus 20.00 per share for surplus.

SCHEDULE #1

Loss for Prior Year

1925

Profit from Sale of Stock	$ 31.50	
		$ 31.50
Interest	478.78	
Legal Fees	1190.12	
Office Expense	142.10	
Revenue Stamps	211.27	2022.27
Net Loss Year 1925		1990.77

Year 1926

Interest	2331.96	
Rents	1120.95	
Profits on Sale of Stock	12812.77	
Dividends	1500.00	17,765.68
Repairs	238.44	
Interest	19810.17	
Taxes	770.37	
Insurance and Other Expenses	1021.74	
Advertising	4703.61	
Stationery	930.01	27 474.34
Net Loss Year 1926		9708.66

Year 1927

Interest Earned	7662.03	
Rents	5319.31	

Dividends	4411.10	
Fees	5.00	17 397.44
Repairs	202.65	
Interest paid	38579.48	
Taxes	218.50	
Street Lighting Assessments	705.79	
Stationery Etc.	1202.90	
Insurance	638.15	41 547.47
Net Loss Year 1927		24 150.03

Total Loss Three Years	1925	$ 1990.77
	1926	9708.66
	1927	24150.03
		35849.46

* * * * * * * * *

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	8. Net Profit (Enter as Item 8)
Real Estate Subdivision	
Net difference between Cost and Selling Price	$308 800 45
Stocks	
" " " " " "	8 878 10
Total	$317 678 55

* * * * * * * * *

SCHEDULE E—TAXES PAID (See Instruction 16)

1. Items	2. Amount (Enter as Item 16)
State Corporation Tax	$ 243.00
City & County Los Angeles	6 400 34
	$6 643 34

* * * * * * * * *

SCHEDULE H—DIVIDENDS DEDUCTIBLE
(See Instruction 19)

1. Name of Corporation	Amount of Dividends 2. Domestic
First National Bank, South Pasadena	$ 100 00
First National Bank, Phoenix, Ariz.	1 300 00
Florence National Bank, Florence, Calif.	1 488 00
Los Angeles Creamery Co.	66 50
Graham National Bank, Graham, Calif.	1 203 00
Pacific National Bldg. Corpn.	86 768 00
Total	$90 925.50

* * * * * * * * *

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS OF CHANGES IN SURPLUS

1. Net income from Item 24, page 1 of the return $89 677 34

2. Nontaxable income:

* * * * * * * * *

(d) Dividends deductible under Section 23(p) of the Revenue Act of 1928.... 90 925 50

* * * * * * * * *

(f) Other items of nontaxable income (to be detailed):	
(1)	
(2) Net Loss prior years	35 849 46
* * * * * * * * *	
5. Total of Lines 1 to 4, inclusive	$216 452 30
* * * * * * * * *	
7. Net profit for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6)	$216 452 30
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	135 910 54
9. Other credits to surplus (to be detailed):	
(a) Surplus paid in	428 240 00
10. Total of Lines 7 to 9, inclusive	$780 602 84
11. Total from Line 17	100 000 00
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	$680 602 84
* * * * * * * * *	
15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):	
(a) Date paid Oct. 1 1928 Character Cash	40 000 00
(b) Date paid Jan. 1 1929 Character Cash	60 000 00
* * * * * * * * *	
17. Total of Lines 15 and 16	$100 000 00

QUESTIONS

KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each general class.

* * * * * * * * *

H.—Finance, including banking, real estate, insurance.

* * * * * * * * *

3. Answers:

(a) General class (use key letter designation) H

(b) Main income-producing business (give specifically the information called for under each key letter, also whether acting as principal, or as agent on commission; state if inactive or in liquidation) Sale of Real Estate and dividends from stocks held for investment

AFFILIATIONS WITH OTHER CORPORATIONS

See Instruction 38

4. Does the corporation own 95 per cent or more of the outstanding capital stock of another domestic corporation or of other corporations? Yes

5. Is 95 per cent or more of your outstanding capital stock owned by another corporation? No

6. Is 95 per cent or more of your outstanding capital stock as well as 95 per cent or more of the outstanding

capital stock of another corporation or of other corporations owned by the same interests? No

7. If the answer to questions 4, 5, and 6, or to any of them, is "yes," answer the following:

(a) Did the corporation file Forms 851, 852, 853, and 853A for the taxable year 1924 or subsequent taxable years? Yes If the answer to this question is "yes," these forms will not be required, except under the circumstances described in question (b). If the answer to this question is "no," and the answer to questions 4, 5, and 6, or to any of them, is "yes," procure from the Collector of Internal Revenue for your district Forms 851, 852, 853, and 853A, Affiliations Schedules 1, 2, 3, and 4, which shall be filled in and filed as a part of this return. If the answer to this question is "no," question (b) need not be answered.

(b) Did exactly the same conditions, as are set out in the Affiliations Schedules filed for 1927 or prior years, obtain during the entire taxable year 1928?..... If the answer to this question is "no," a statement, setting forth the particulars in which the situation has changed, should be attached to and made a part of this return. If there have been any changes in stockholdings, a complete schedule of such changes should be submitted on Form 853, Affiliations Schedule 3. If there are companies other than those covered by the Affiliations Schedules for prior years which, applying the tests contained in questions 4, 5, or 6, may have come into the affiliated group since 1927, Forms 851, 852, 853, and 853A, are required for the entire group for the taxable year.

(c) Did the corporation file a consolidated return for the preceding taxable year on a different affiliation basis from this return? No If answer is "yes," a copy of the

Commissioner's letter granting permission to change the basis of filing under Section 142(a) of the Revenue Act of 1928 should be attached to the return.

PREDECESSOR BUSINESS

8. Did the corporation file a return under the same name for the preceding taxable year? Yes Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917? No If answer is "yes," give name and address of each predecessor business, and the date of the change in entity.

.....

.....

Upon such change were any asset values increased or decreased? No If the answer is "yes," closing balance sheets of old business and opening balance sheets of new business must be furnished.

BASIS OF RETURN

9. Is this return made on the basis of actual receipts and disbursements? Yes If not, describe fully what other basis or method was used in computing net income.

.....

* * * * * * * * *

LIST OF ATTACHED SCHEDULES

11. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule

number. The name and address of the corporation should be placed on each separate schedule accompanying the return.

Schedule #1 Loss for Prior Years

The corporation's books are in care of Pacific National Company. Located at 855 So. Hill St. Los Angeles Calif.

AFFIDAVIT

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return, including the accompanying schedules and statements, has been examined by him and is, to the best of his knowledge and belief, a true and complete return made in good faith, for the taxable year as stated, pursuant to the Revenue Act of 1928 and the Regulations issued under authority thereof.

.....

President.

[Corporate Seal] .....

Treasurer.

Sworn to and subscribed before me this.....day of ....., 1929.

[Notarial Seal]

....., ...

(Signature of officer administering oath) (Title)

[Exhibit No. 2 is a written contract between Pacific National Company and Transamerica Corporation, dated December 23, 1931. In contract Pacific National Company assigned to Bank of America National Trust and Savings Association various assets, including 29,188-14/100 shares of the capital stock of Transamerica Corporation, and the beneficial interest of Pacific National Company in the Trust S-1542, Title Guarantee and Trust Company, but excluding the claim of Pacific National Company for a refund of 1928 income taxes. In consideration of said assignment, Transamerica Corporation released Pacific National Company from any further obligation or liability or guarantee which might exist under and by reason of an agreement between the parties dated July 17, 1929 and supplemental and extension agreements.]

EXHIBIT "3"

PACIFIC NATIONAL BANK
Capital $1,000,000.00

LOS ANGELES, CALIFORNIA
August 13, 1927.

Pacific National Bank
Hill at Ninth
Los Angeles, California

Gentlemen:

In reference to sale of the Culver City Park Tract, method that would be employed, etc., I beg to advise you that after a careful study of the situation for several weeks, I find that most of the sub-divisions have practically eliminated the newspaper and radio advertising, and have resorted to the street and house to house canvas for prospects.

The commissions range from 10% to 15% to salesmen, $15 to $20 per week for canvassers and solicitors, with a 2% bonus on sales with the managing solicitor at $20 per week salary and ½% to 1% bonus, and closes with 2% commission.

As manager of your Culver City Park Tract, I would suggest that we employ five solicitors at $15 per week with a bonus of 2% for each sale made the solicitor's prospect. That we employ a manager of solicitors whose duty it will be to put the solicitors out on selected territory, and see that they work diligently; arrange for the qualification of all prospects; arrange to have salesmen bring the prospects to the tract at 11 A. M. and 3 P. M., and assist on the tract with sales in the field. This manager to receive a salary of $200.00 per month and a bonus of ½% to 1% commission on sales. Salesmen to re-

ceive 7½% commission on such sales and 10% commission for sales in case they furnish their own prospects without any expense to us. This is the least expensive method I know of, and eliminates the costly newspaper and radio advertising, and expense of lunch and lecture system, and other high commissions as set forth in this letter. I would suggest, however, that we run a small advertisement in the Culver City paper so that we may obtain the publicity that they have promised us. I would also suggest that we have an attractive pamphlet with an aeroplane photo of the old Speedway showing the close proximity to the center of Culver City, and the many important boulevards in and adjacent to Culver City.

Pacific National Bank
#2

Up to the present time it has been impossible for me to employ a salesman to occupy the office on the corner of Culver Blvd. and Overland Blvd., and run his chances on making sales to prospects who would voluntarily call at this office.

Some tracts are guaranteeing a salesman from $100 to $150 per month to hold down certain corners of their tracts where branch offices are established. It seems to me that we could well afford to employ a salesman for our branch office at a salary of $100 per month guarantee.

It does not seem possible that salesmen in this location could make less than one sale a month. The commission on such a sale would more than pay the guarantee.

Trusting that the above suggestions will meet with your approval, I beg to remain

Respectfully yours,

W. H. ELWELL

Exhibit No. 9

PACIFIC NATIONAL COMPANY LOS ANGELES

PRIVATE TRUST #46

PERTINENT STATISTICS ON CONTRACTS
DECEMBER 31, 1928

STATEMENTS OF PERCENTAGES ON BASIS
OF AMOUNTS AND NUMBER OF ACCOUNTS

	NUMBER		AMOUNT	
	Actual	Percent	Actual	Percent
Paying Accounts	136	60%	$323,762.38	62%
Delinquent Accounts	92	40%	201,674.56	38%
TOTALS	228	100%	$525,436.94	100%
Cancelled Accounts	16	6%	$ 35,274.51	6 3/5%
Cash Sales	13	5 3/5%	$ 41,144.25	7 4/5%

Number percentages based on total NUMBER of accounts carried.

Amount percentages based on total AMOUNT of accounts carried.

EXHIBIT No. 10

PACIFIC NATIONAL COMPANY LOS ANGELES

	YEAR 1927	YEAR 1928
Number of Lots Sold (Including Completed Sales)	14	243
Total Selling Price	$57,255.00	$780,771.25
Commissions on Sales	$18,113.40	$255,597.90
Ratio of Commission to Sales Price	31.63%	32.72%
Cost of Lots Sold	$30,735.99	$414,608.91
Cost of Lots plus Commission	$48,849.39	$670,230.81
Gross Profit to be Realized	$ 8,405.61	$110,548.44
Ratio of Profit to Selling Price	14.68%	14.26%

EXHIBIT No. 11

PART I

DELINQUENT

Form 1041

Treasury Department
Internal Revenue Service
(Auditor's Stamp)

FIDUCIARY RETURN OF INCOME
For Calendar Year 1927

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

(Print Names and Address Plainly Below)

Name of Estate or Trust CULVER CITY SPEEDWAY TRUST NO. 46

Name and Address of Fiduciary { The Pacific National Bank of Los Angeles, Trustee under its private trust No. 46. Bank of America National Trust and Savings Bank, Head Office, Los Angeles, Successor in Interest.

1. Was a return of income for 1926 filed on behalf of the estate or trust named above? No

* * * * * * * * *

3. Give date of creation of trust or decedent's death July 1, 1927

4. State whether books are kept on cash or accrual basis Cash and Installment Basis.

Item and Instruction No. INCOME

* * * * * * * * *

6. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C) $4,821.43

* * * * * * * * *

9. Total Income in Items 1 to 8..... $4,821.43

DEDUCTIONS

* * * * * * * * *

17. Net Income (Item 9 minus Item 16)..... $4,821.43

18. BENEFICIARIES' SHARES OF INCOME AND CREDITS

(See Instruction 18)

1. Name and Address of Each Beneficiary (Designate surviving spouse and nonresident aliens)	2. Percentage of Beneficial Interest	4. Balance of Net Income (Item 17 minus Item 7 (a)
(a) Pacific National Company,	$	$
(b) 315 West Ninth Street, Los Angeles	100	4,821 43

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 6)

1. Kind of Property	8. Net Profit or Loss (Enter as Item 6)
Real Estate Installment Sales—Realized Profit	$4,821.43
Schedule Attached	

* * * * * * * * *

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and, to the best of my knowledge and belief, is a true and complete return, made in good faith for the accounting period stated, pursuant to the Revenue Act of 1932 and the Regulations issued thereunder.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, Successor Trustee to Pacific National Bank of Los Angeles

(Signature of fiduciary or officer representing fiduciary)

By A. J. Robillard

Assistant Trust Officer

(Address of fiduciary or officer)

Sworn to and subscribed before me this 3rd day of January, 1935.

[Notarial Seal] Paul F. Chapman

Notary Public in and for the County of Los Angeles, State of California

(Title) (Signature of officer administering oath)

See Instruction 24

(An Amended Return must be plainly marked "Amended" across face of return)

PACIFIC NATIONAL COMPANY LOS ANGELES

CULVER CITY SUBDIVISION SALES
FOR THE YEAR 1927

DATE OF SALE	NAME	LOT NO.	SELLING PRICE	COMMISSION PAID OR ACCRUED	COST OF LOT	TOTAL NET REALIZABLE PROFIT
11/23	Olive L. Brown	7	$10,495.00	$ 3,673.40	$ 5,532.10	$1,289.50
	* * * * * * * * *					
	TOTALS		$57,255.00	$18,113.40	$30,735.99	$8,405.61

1927 PAYMENTS RECEIVED	1927 TAXABLE NET PROFIT	BALANCE OF REALIZABLE NET PROFIT	1928 PAYMENTS RECEIVED	1928 TAXABLE NET PROFIT	BALANCE OF REALIZABLE NET PROFIT
$ 2,624.00	$ 322.38	$ 967.12	$1,026.84	$ 126.11	$ 841.01
* * * * * * * * *					
$15,302.01	$4,821.43	$3,584.18	$4,533.15	$1,010.55	$2,573.63

EXHIBIT No. 11

PART II

DELINQUENT

Form 1041
U. S. Internal Revenue
(Auditor's Stamp)

FIDUCIARY RETURN OF INCOME
For Calendar Year 1928

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

(Print Names and Address Plainly Below)

Name of Estate or Trust CULVER CITY SPEEDWAY TRUST NO. 46

Name and Address of Fiduciary { The Pacific National Bank of Los Angeles, Trustee under its private trust No. 46. Bank of America National Trust and Savings Bank, Head Office, Los Angeles, Successor in Interest.

1. Was a return of income for 1927 filed on behalf of the estate or trust named above? Delinquent return filed November ...., 1934

2. If so, to what collector's office was it sent (give district or city and State)? Los Angeles

3. Give date of creation of trust or decedent's death July 1, 1927

Item and Instruction No.	INCOME	
* * * * * * * * * *		
2.	Interest on Bank Deposits, Notes, and Corporation Bonds, etc. (except interest upon which a tax was paid at source)	$14,962 77
* * * * * * * * * *		
5.	Profit from sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	39,226 67
* * * * * * * * * *		
8.	Total Income in Items 1 to 7	$54,189.44
	DEDUCTIONS	
9.	Interest Paid	$16,500 00
10.	Taxes Paid	18,571 42
* * * * * * * * * *		
14.	Other Deductions Authorized by Law. (Explain in Schedule E) Tract Expense	4,044 56
15.	Total Deductions in Items 9 to 14	$39,115 98
16.	Net Income (Item 8 minus Item 15)	$15,073.46

BENEFICIARIES' SHARES OF INCOME AND CREDITS

(See Instruction 17)

1. Name and Address of Each Beneficiary (Designate nonresident aliens)	2. Percentage of Beneficial Interest	4. Balance of Net Income (Item 16 minus Item 6)
(a) Pacific National Company	$	$
(b) 315 West Ninth Street, Los Angeles	100	15,073 46

* * * * * * * * *

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 5)

1. Kind of Property	8. Net Profit (Enter as Item 5)
Real Estate Installment Sales—Realized Profit—1927 Sales	$ 1,010 55
Real Estate Installment Sales—Realized Profit—1928 Sales	38 216 12
TOTAL	$39,226 67

SCHEDULES ATTACHED

* * * * * * * * *

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements (if any), has been examined by me, and, to the best of my knowledge and belief, is a true and complete return made in good faith for the accounting period as stated, pursuant to the Revenue Act of 1928 and the Regulations issued under authority thereof.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION, Successor Trustee to Pacific National Bank of Los Angeles

(Signature of fiduciary or officer representing fiduciary)

By A. J. ROBILLARD

Assistant Trust Officer

(Address of fiduciary or officer)

Sworn to and subscribed before me this 3rd day of January, 1935

Paul F. Chapman

(Signature of officer administering oath)

NOTARY PUBLIC In and for the County of Los Angeles, State of California

(Title)

(An amended return must be plainly marked "Amended" across face of return)

PACIFIC NATIONAL COMPANY LOS ANGELES

CULVER CITY SUBDIVISION TRUST SALES FOR THE YEAR 1928

DATE OF SALE	NAME	LOT NO.	SELLING PRICE	COMMISSION PAID OR ACCRUED	COST OF LOT
4/12	Wm. I. and Lena M. Smith	3	$ 5,000.00	$ 1,750.00	$ 2,635.84
	* * * * * * * * *				
	TOTALS		$781,984.25	$255,854.45	$414,608.91

TOTAL NET REALIZABLE PROFIT	1928 PAYMENTS RECEIVED	1928 TAXABLE NET PROFIT	BALANCE OF REALIZABLE PROFIT
$ 614.16	$ 1,231.25	$ 151.23	$ 462.93
* * * * * * *			
$111,520.89	$265,961.22	$ 38,216.12	$ 73,304.77

EXHIBIT NO. 12

IT:E:RR
EBP

July 17, 1928.

Mr. Dana Latham,
Southern Building,
Washington, D. C.

In re: Trust S-6165,
Title Insurance and Trust Company,
Los Angeles, California.

Sir:

Receipt is acknowledged of your letter of July 10, 1928, setting forth the following facts in connection with the filing of the 1927 income tax return of the above-named trust and requesting a ruling to the effect that the return for the taxpayer be considered to have been filed as a trust and not as an association, and that the election filed with your letter be considered as meeting the provisions of Section 704(b) of the Revenue Act of 1928, wherefore the tax liability of the taxpayer for the year 1927 is determinable on the basis of the trust and not as an association.

You set forth substantially the following facts:

During March, 1928 and prior to any knowledge that Section 704(b), as now enacted in the Revenue Act of 1928, would become law, two individuals interested in the trust, W. F. Thompson and K. W. Thompson, in their own behalf, without the consent or acquiescence of the trustee, filed a return as an association for the calendar

year 1927, which return purported to cover Trust S-6165. The sole purpose of filing this return was to expedite audit, with a view to obtaining a quicker determination of the tax liability of the trust and a more speedy distribution of the funds then being withheld by the trustee. As is well known, at that time many hundreds of similar trusts were being treated by the Bureau of Internal Revenue as associations, and it appeared that litigation extending over a number of years must inevitably ensue. The filing of the return as an association did not amount to an admission by the Thompsons that said trust was an association, but was merely done in order to quickly close the case.

On March 15, 1928, the Title Insurance and Trust Company, the trustee designated under the declaration

of the trust, filed with the Collector of Internal Revenue for the Sixth District of California at Los Angeles, California, a return on Form 1041 in behalf of said trust. This was the same procedure which had been followed in behalf of said trust from the date of its creation. The trustee has never recognized or consented either expressly or by implication, to the return as an association filed by the Thompson brothers.

Since the enactment of the Revenue Act of 1928 trustee elects, as provided by Section 704(b) of that Act, to have said trust taxed as a trust and not as an association, from the date of its organization through December 31, 1927.

You request that the return filed by the trustee on Form 1041 for the year 1927 be accepted as the original return for the trust, filed as a trust; that the election executed by the trustee under date of July 3, 1928, filed with your letter, be accepted as a proper exercise of the option provided for in Section 704(b) of the Revenue Act of 1928; and that in accordance with such fulfillment of the provisions of Section 704(b), a ruling be made to the effect that the trust is taxable for the year 1927 as a trust and not as an association.

It appears from the evidence that the trust was created, with a single trustee, for the sole purpose of liquidating real property as a single venture. It further appears that the trustee, under date of July 3, 1928, by an option executed in conformity with the requirements of Section 704(b), elects that the trust be taxed as a trust and not as an association. The only question remaining is whether the return alleged to have been filed by the trustee on March 15, 1928 for the year 1927, as a trust, should be deemed as the proper return and so considered in determining the question of whether or not the trust filed its original return for 1927 as a trust and not as an association.

It is the opinion of this office that inasmuch as trustees are the proper persons to file returns for trusts, and are the only persons required by law to do so, and as it further appears from the trust instrument in this case that the trustee was the only agency authorized to bind the trust, the return filed on March 15, 1928 by the trustee of Trust S-6165, Title Insurance and Trust Company, is to be recognized as the return of the taxpayer in preference to any other returns filed by other persons not prop-

erly authorized by the trustee to make returns for the said trust

In view of the above, you are advised that, if as a matter of fact, the trustee of Trust S-6165, Title Insurance and Trust Company,

– 3 –

Mr. Dana Latham.

filed a return on Form 1041 on March 15, 1928 for the year 1927 and did not authorize the filing of any other return for the trust for the year in question, such return is to be recognized as the return of the trust for that year. You are further advised that, assuming that Form 1041 was filed by the trustee for the year 1927 as set forth in the preceding sentence, it appears that all the requirements of Section 704(b) of the Revenue Act of 1928 have been met, and the concern is taxable for the year 1927 and prior years as a trust and not as an association.

Respectfully,

C. B. ALLEN,
Deputy Commissioner,
By L. K. SUNDERLIN
Chief of Section.

JB-4

Thereupon, the Plaintiff rested and moved for judgment and requested special findings of fact and conclusions of law; the Defendant filed the following motion for judgment; requested special findings of fact and conclusions of law, and rested.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COMPANY, a corporation, Plaintiff, vs. GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, Defendant.	No. 5827-M MOTION FOR JUDGMENT.

Comes now the defendant, by and through his attorneys, Peirson M. Hall, United States Attorney for the Southern District of California, M. D. Gallaher, Assistant United States Attorney for said District, and Eugene Harpole, Special Attorney, Bureau of Internal Revenue, and moves the Court for judgment in his behalf on the ground and for the reason that there is no substantial or sufficient evidence before the Court upon which to base a judgment for the plaintiff.

Dated: This 19th day of February, 1935.

Peirson M. Hall – E. H.
PEIRSON M. HALL,
United States Attorney,

M. D. Gallaher – E. H.
M. D. GALLAHER
Assistant United States Attorney,

Eugene Harpole
EUGENE HARPOLE,
Special Attorney,

U. S. Bureau of Internal Revenue,
Counsel for Defendant.

The case was then argued verbally by the respective counsel and the parties were instructed by the Court to file their requested special findings of fact and conclusions of law within ten days, which was done by both parties.

On March 8, 1935, the Court filed a minute order finding for the Defendant. The Court made and filed its own findings of fact and conclusions of law. The findings of fact and conclusions of law proposed by the Plaintiff were not adopted by the Court but were ordered filed. Exception noted and allowed to the Plaintiff.

The special findings of fact and conclusions of law requested by the Plaintiff and denied by the Court, of which denial the Plaintiff took and was allowed an exception, are as follows:

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL
DIVISION

PACIFIC NATIONAL COMPANY, a corporation, Plaintiff, vs. GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, Defendant.	At Law No. 5827-M PLAINTIFF'S SPECIAL FINDINGS OF FACT and CONCLUSIONS OF LAW

This cause came on regularly for trial on the 19th day of February, 1935, before the Court, sitting without a Jury, trial by Jury having been waived by written Stipulation of the parties hereto; Plaintiff appearing by Melvin D. Wilson, Esq., its Attorney, and Defendant appearing by Pierson M. Hall, Esq., United States Attorney for the Southern District of California, and Eugene Harpole, Esq., Assistant United States Attorney for said District; and evidence, both oral and documentary having been received, and the Court having fully considered the same, hereby makes the following special findings of fact:

I.

That the jurisdiction of this Court is dependent upon a Federal question in that the cause arises under the laws of the United States pertaining to Internal Revenue, to-wit: The Revenue Act of 1928.

II.

Plaintiff herein is, and during all the times hereinafter mentioned was, a corporation organized under the laws of the State of California, and has its principal office and place of business in the Pacific National Bank Building, 315 West Ninth Street, Los Angeles, California.

III.

That the Defendant, Galen H. Welch, was, from April 6, 1926, to June 30, 1933, the duly commissioned and acting Collector of Internal Revenue for the Sixth Collection District of California, pursuant to the Laws of the United States, and during all the times hereinafter mentioned, resided, and still resides, and has his office in the City of Los Angeles, County of Los Angeles, State of California.

IV.

That this action is brought against the Defendant as a former officer acting under and by virtue of the Revenue Act of 1928, in effect for the year 1928, on account of acts done under color of his office and of the Revenue Laws of the United States, as will hereinafter more fully appear.

V.

That Plaintiff filed with the proper officer designated by Statute, its corporation income tax return for the calendar year 1928, as required by law, within the statutory period, to-wit: On or about the 14th day of March, 1929, and paid a tax to the Defendant of $10,761.28, as follows:

March 14, 1929 –	$ 2,690.30
June 12, 1929 –	2,690.30
September 11, 1929 –	2,690.34
December 12, 1929 –	2,690.34
Total –	$10,761.28

VI.

ORGANIZATION OF PLAINTIFF COMPANY.

Plaintiff was organized in 1925 under the laws of California. Throughout its existence it has had its principal office and place of business in the Pacific National Building, Los Angeles, California. Plaintiff was organized to, and did, hold stocks of various companies, and other securities. Throughout 1928, Plaintiff held more than 95 per cent of the stock of Pacific National Building Corporation, which Corporation filed a separate Federal Corporate Income Tax Return for the year 1928. Plaintiff also held, throughout 1928, over 80 per cent of the stock of Pacific National Bank. Plaintiff had, throughout 1928, numerous stockholders. In 1925, 1926 and 1927, Plaintiff sustained losses which were reflected in its Federal Corporation Income Tax Returns filed for those years.

VII.

THE TRUST.

Around the middle of 1927, Plaintiff purchased, from Pacific National Bank and Hammond Lumber Company, a tract of land near Culver City, California. Plaintiff paid $309,000 cash and gave its Notes for $300,000, as consideration for the purchase of said land. Plaintiff conveyed the title to this land to the Pacific National Bank as Trustee and became the sole beneficiary of Trust No. P. T. 46, Pacific National Bank, Trustee. The Trust Indenture, executed by the Trustee, provided that the Notes executed by Plaintiff, amounting to $300,000, would be secured by a first lien on the real property in the Trust; that the real property might be subdivided, improved and

sold by the Trustee; that the Trustee would, so far as able from moneys coming into it from sale of lots, or from the beneficiary, pay all taxes, sales' commissions, Trustee's fees, $700 per lot on the encumbrance on the property, some amount from the sale of each lot towards the cost of improvements, and other costs and expenses of the Trust. The remainder, if any, was to be paid to the beneficiary. The beneficial interest was divisible. The Trust was commonly known as the Culver City Speedway Trust.

VIII.

In August of 1927 the Trustee, Pacific National Bank, negotiated with Mr. W. H. Elwell to subdivide and sell the property for such prices and terms as would recover to Plaintiff its investment in the Trust. The Trustee represented to Mr. Elwell that the entire subdivision, including the speedway property, was available for sale. Mr. Elwell, after studying the situation, estimated that he could sell the residential lots for $800 or $900, and the business lots at about $75 per front foot; that at such prices the property would find a market and such prices would return to Plaintiff its investment. Mr. Elwell planned to charge total commissions of around 20 per cent; he planned to use conventional, conservative sales methods. Subsequently, the Trustee advised Mr. Elwell that they had mistakenly assumed that the race track property was available for sale, but that it was not so available, but that it was desired to sell the lots at a sufficiently increased price to net the same total investment to Plaintiff. Mr. Elwell was of the opinion that this would force so high a price on the lots that he could not sell them. He wished to withdraw from the engagement but, at the request of the Trustee, kept on trying to sell lots for several weeks.

IX.

On the 24th of October, 1927, the Plaintiff entered into an Agreement with Mr. Frank J. Brick, whereby Mr. Brick was to act as sales agent for Trust No. P. T. 46, Pacific National Bank, Trustee. Mr. Brick had a very large sales force. Under the contract with Mr. Brick, Mr. Brick was to get selling commissions of 35 per cent of the selling price. A new schedule of prices was made up which increased the selling price of residential lots to an average of around $2,400. The business lots were substantially increased and in many instances doubled over the prices originally set by Mr. Elwell. The Agreement with Mr. Brick also provided that if he were able to sell the lots for prices higher than the list price in his contract, he was to get one-half of the excess. Mr. Brick's contract took effect November 1, 1927, and he used a very large sales force; employed the free lunch and lecture system, and sold lots to persons by the use of various other high-pressure methods. His salesmen greatly exaggerated the value and prospects of the property, such exaggerations sometimes running into untruths.

X.

Mr. Elwell was to get an overriding commission of 1 per cent on Mr. Brick's sales. Mr. Elwell's overriding commission was to be paid after Mr. Bricks' commissions were paid. Because of the numerous delinquencies, forfeitures, and cancellations, Mr. Elwell only received $1,600 from those overriding commissions although the sales in 1927 and 1928 alone were $838,026.25, on which his commission should have been $8,380.26.

The balance due the Trustee, on December 31, 1928, from 1928 installment sales contracts, was $489,974.59.

This balance had a fair market value of 66-2/3 per cent, or $326,649.72. If the income of the Trust for 1928 had been computed on the closed basis, but the contracts had been included at their fair market value, the Trust would not have had an income, but a loss, and Plaintiff would have had no taxable income and no tax liability.

The Plaintiff signed the contract with Mr. Brick according to the custom among Trust Companies in connection with subdivision trusts. In such cases the Trustees refused to sign the agency agreement.

XI.

By December 31, 1928, the condition of the contracts relating to the sale of lots in this Trust was as follows:

STATEMENT OF PERCENTAGES ON BASIS OF AMOUNTS AND NUMBER OF ACCOUNTS

	Number		Amount	
	Actual	Percent	Actual	Percent
Paying Accounts	136	60%	$323,762.32	62%
Delinquent Accounts	92	40%	201,674.56	38%
Totals –	228	100%	$525,436.94	100%
Cancelled Accounts	16	6%	$ 35,274.51	6-3/5%
Cash Sales	13	5-3/5%	$ 41,144.25	7-4/5%

Number percentages based on total NUMBER of accounts carried.

Amount percentages based on total AMOUNT of accounts carried.

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XII.

The large commissions necessarily incurred in the selling of the lots in this Trust, and the small possible profit to the Trust after the cost of the land and improvements and selling commissions, are shown by the following statistics:

	Year 1927	Year 1928
Number of Lots Sold (Including Completed Sales) –	14	243
Total Selling Price –	$57,255.00	$780,771.25
Commissions on Sales –	$18,113.40	$255,597.90
Ratio of Commission to Sales Price –	31.63%	32.72%
Cost of Lots Sold –	$30,735.99	$414,608.91
Cost of Lots Plus Commission –	$48,849.39	$670,230.81
Gross Profit to be Realized –	$ 8,405.61	$110,548.44
Ratio of Profit to Selling Price –	14.68%	14.26%

XIII.

The Pacific National Bank, Trustee, kept books for Trust No. P. T. 46, on the basis of cash receipts and disbursements. The Pacific National Bank, as Trustee for Trust No. P. T. 46, did not file Fiduciary, or other, income tax returns for the Trust for 1927 or 1928.

On July 17, 1929, Transamerica Corporation purchased, from Plaintiff, the stock it held in Pacific National Bank. By the terms of this transaction, Plaintiff guaranteed the assets of the Pacific National Bank. Plaintiff received shares of stock of Transamerica Corporation in consideration for the stock in Pacific National Bank given up by Plaintiff. The Pacific National Bank was absorbed by the Bank of Italy and its successor, Bank of America,

and Trust No. P. T. 46 was thereafter designated by the Bank of Italy as Trust No. P. N. 46.

On August 4, 1930, the Title Guarantee and Trust Company became Trustee of Trust No. P. N. 46, formerly Trust No. P. T. 46, and designated the Trust as Trust No. S-1542, Title Guarantee and Trust Company, Trustee.

In 1934 the Bank of America National Trust & Savings Association became the Trustee of Trust No. S-1542, formerly Trust No. P. N. 46, formerly Trust No. P. T. 46.

XIV.

On January 3, 1935, the Bank of America National Trust & Savings Association, successor Trustee of Trust No. P. T. 46, filed Fiduciary returns for the Trust for the years 1927 and 1928. Such returns were filed on the installment basis.

XV.

On the installment basis Trust No. P. T. 46, Pacific National Bank, Trustee, for 1928, either sustained a loss or an income less than the loss sustained by Plaintiff in 1928 from its operations exclusive of Trust No. P. T. 46.

XVI.

BOOKS AND RETURN OF PLAINTIFF.

The books of Plaintiff were kept from its organization and throughout 1928, by F. W. Shelton, Secretary of the Company. Mr. Shelton, in 1928, was 26 years of age. Prior to becoming Secretary of Plaintiff, in 1925, he had been a teller and a bookkeeper in a Bank. In

1925, he became Secretary of Plaintiff upon its organization and thereafter kept its books and filed its income tax returns. The above description of his tax and accounting experience includes all of his business experience. He is a high school graduate.

Trust No. P. T. 46 was organized on July 1, 1927 and its property was subdivided, and a large part of it was sold before August 1, 1928. Beginning in August, 1928, Mr. Shelton, from the reports received by the Trustee, entered all of the transactions of the Trust, from the beginning, on the books of Plaintiff. On each ledger sheet of Plaintiff's books, relating to transactions of the Trust, appeared some designation indicating that it was an account with the Trustee of Trust No. P. T. 46, or of the land in that Trust. Mr. Shelton had no instructions, assistance, or advice from anyone, either within the Company or in the Bank, or otherwise, relative to the method of keeping the books of the Plaintiff.

XVII.

Mr. Shelton prepared the 1928 Federal income tax return of Plaintiff. In preparing this return he had no instructions or assistance or advice from any other officer of the Company, or from anyone connected with the Pacific National Bank, or from any outside tax consultant, or other person. In the 1928 Federal return of Plaintiff, Mr. Shelton included all of the activities of the Trust from its inception on July 1, 1927. He included sales made in 1927, amounting to $57,255, on which he calculated a net profit of $8,405.61. In this return Mr. Shelton failed to take depreciation on depreciable assets belonging to Plaintiff, and also failed to take depletion

deductions on oil producing property belonging to Plaintiff. Mr. Shelton included, in the return of Plaintiff, $137,007.17 as being Plaintiff's income from Trust No. P. T. 46. This income included $8,405.61 from the 1927 operations of the Trust. This income was computed on the basis of treating the contracts for the sale of the lots as having a fair market value equal to the face value of such contracts. Mr. Shelton thought that this procedure was necessary as he thought that if 25 per cent or more of the total selling price of the lot was received in the year of sale, the entire estimated profit on the lot had to be included as taxable income in the year of sale. He did not know that the Revenue Act of 1928 allowed profits on the sale of real estate to be returned on the installment basis if the initial collections amounted to 40 per cent of the selling price. He did not know that the Revenue Act of 1928 increased this percentage from 25 per cent to 40% over the provisions of the 1926 Revenue Act. Mr. Shelton did not know that even when a sale had to be returned on the closed or completed basis, the seller was required to report, as gross income, in the year of sale, the fair market value of the contract only. Mr. Shelton did not know that where the sale had to be returned on the closed or completed basis that the collections could be treated as return of capital until the cost had all been recovered, after which, subsequent collections would be treated as income. Mr. Shelton did not know that the law or regulations permitted more than one way of reporting sales of real estate which were sold under contract, and did not know that the seller could elect the method and would be bound by the method he selected.

The inclusion in the 1928 return of $137,007.17, as being the income of Trust No. P. T. 46, was not based, grounded, or influenced on or by the fact that Plaintiff had net losses for previous years, which were taken as deductions in the 1928 return, as follows:

1925 –	$ 1,990.77
1926 –	$ 9,708.66
1927 –	$24,150.03

XVIII.

Regulations 74, under the Revenue Act of 1928, were not promulgated until February 15, 1929, and were printed and distributed after that date.

XIX.

CLAIMS.

In the late fall of 1930, Messers. Kahan and Seltzer, Certified Public Accountants, were employed to audit the books of Plaintiff. They noticed that the activities of Trust No. P. T. 46 were recorded on the books of Plaintiff and that Plaintiff had calculated the large income from the Trust activities in 1928 on the closed basis and had paid income tax on the same. Mr. Kahan prepared a Claim for Refund for the tax paid by Plaintiff on its 1928 return, and filed the same on February 26, 1931. The basis for the Claim was the exclusion from Plaintiff's income of all income from Trust No. P. T. 46 for 1928.

XX.

In April or May of 1931, the Internal Revenue Agent began the audit of Plaintiff's Claim for Refund of 1928 tax. He contacted Messrs. Kahan and Seltzer who advised him that the income of Trust No. P. T. 46 should

be excluded from the 1928 income of Plaintiff for the reasons set forth in the original Claim and for the further reason that Trust No. P. T. 46 was an association for 1928 and as such should have filed a separate corporate income tax return; that Plaintiff owned all the stock of Pacific National Building Corporation for 1928, but that the two Companies had filed separate returns and therefore all Companies affiliated with Pacific National Company should file separate income tax returns for 1928. About May 15, 1931, Mr. Kahan, on behalf of Plaintiff, handed the Revenue Agent a typewritten memorandum of authorities tending to show that Trust No. P. T. 46 was an association taxable as a corporation.

XXI.

The Revenue Agent completed his report on the audit of the Plaintiff's 1928 Claim for Refund on June 16, 1931, and mailed a copy to the Plaintiff on or about July 15, 1931. His report denied that the Trust was an association taxable as a corporation. Plaintiff filed a written protest to the Revenue Agent's Report on July 27, 1931, and again on September 11, 1931. Plaintiff, through Harry Kahan, Certified Public Accountant, its tax counsel, had a conference in the office of the Internal Revenue Agent in Charge, at Los Angeles, California, on Plaintiff's 1928 Claim for Refund, on August 25, 1931. On September 23, 1931, the Conferee in the office of the Internal Revenue Agent in Charge, in a letter addressed to Plaintiff, ruled that Trust No. P. T. 46 was not an association, and advised that the file would be forwarded to the Commissioner of Internal Revenue at Washington, D. C.

XXII.

After further correspondence between Plaintiff and the Commissioner of Internal Revenue at Washington, D. C., the Commissioner, on February 15, 1932, in a letter addressed to Plaintiff, ruled that Trust No. P. T. 46 was not an association and that Plaintiff's Claim would be denied for $9,669.89, and allowed for $1,091.39 on other points not material to this suit.

XXIII.

On April 1, 1932, Plaintiff's Attorneys had a conference with the Commissioner of Internal Revenue in Washington, D. C., on the original and amended Claim for Refund.

XXIV.

While the audit of the original and amended Claim for Refund was still pending, Plaintiff, on April 4, 1932, filed, on Form 843, its supplement or amendment to its Claim for Refund setting out the theory that Trust No. P. T. 46 was an association and as such should have filed a separate corporate return, and that the income of the Trust should be excluded from Plaintiff's income.

XXV.

On May 17, 1932, the Commissioner of Internal Revenue rejected Plaintiff's original and supplemental or amended Claim for Refund. This suit was instituted on August 19, 1932.

XXVI.

Plaintiff still owns its original and supplemental or amended Claim for the refund of 1928 Federal corporate income tax.

XXVII.

SUBSEQUENT HISTORY OF TRUST AND PLAINTIFF.

Plaintiff has never received any money or property from Trust No. P. T. 46, or Trust No. P. N. 46, or Trust No. S-1542, or from the Culver City Speedway Trust by whatever name known and by whatever Trustee administered.

XXVIII.

On December 23, 1931, Plaintiff assigned to Transamerica Corporation its stock of Transamerica Corporation acquired in exchange for Pacific National Bank stock, and its entire beneficial interest in this Trust under the contract dated July 17, 1929, by which Plaintiff guaranteed the assets of Pacific National Bank. As of December 23, 1931, there was still an encumbrance on the property held in this Trust, which encumbrance amounted to $126,785.

XXIX.

Plaintiff lost its entire investment in the beneficial interest in Trust No. P. T. 46.

XXX.

Plaintiff sustained a loss in each year of its existence. No income will escape tax if the income from Trust No. P. T. 46 is computed on the installment basis for 1928, or if Trust No. P. T. 46 is considered as an association taxable as a corporation for 1928.

XXXI.

THE ASSOCIATION.

Trust No. P. T. 46, Pacific National Bank, Trustee, was engaged in business for profit and was doing business for profit throughout the year 1928.

XXXII.

The beneficiary of the Trust had control of the Trust and the Trustee through ownership of over 80 per cent of the stock of the Trustee Bank, and through practically interlocking officers and directors. The corporate beneficiary had numerous stockholders.

XXXIII.

Trust No. P. T. 46, its beneficiary, Trustee, sales force and lien holder constituted a body of persons acting together without a charter but upon the methods and form used by incorporated bodies for the prosecution of some common enterprise for profit.

CONCLUSIONS OF LAW

As conclusions of law from the foregoing facts, the Court determines that:

I.

Under the Revenue Act of 1928 a Fiduciary is permitted and required to keep books and file income tax returns upon a method chosen by the Fiduciary and that no one else is permitted or authorized to choose the method of accounting to be used by the Trustee in keeping books and filing income tax returns, and no one else, by their actions, can make a binding election as to the method in which the Trustee must file income tax returns for the

Trust; that if anyone other than the Trustee attempts to file returns for the Trust, or to choose a method of filing a return, or attempts to make an election for the Trustee, such actions are negatory and are specifically repudiated when the Trustee files a return on a different basis.

II.

The Trustee of Trust No. P. T. 46 did not elect to file an income tax return on the closed or completed basis, but did elect to file a return for 1928 for the Trust on the installment basis.

III.

There is no provision of law or regulations permitting or requiring the beneficiary of a Trust to elect the manner in which the beneficiary will report the income of the Trust. The beneficiary of the Trust, under the law and regulations, is required to report its distributive share of the income of the Trust, which distributive share is calculated by the Trustee and under the method of accounting adopted by the Trustee in filing income tax returns for the Trust.

IV.

If a beneficiary of a Trust reports income in its return as being its distributive share of the income of a Trust, but such income is computed on a basis inconsistent with the method of accounting adopted by the Trustee in filing a return for the Trust, the beneficiary is not bound by its election in so reporting; there is no provision in the law or regulations binding the beneficiary to such action; that the Commissioner may assert that the beneficiary is estopped from subsequently changing the method of reporting the income of the Trust, but the estoppel to be

effective must be affirmatively pleaded; the Defendant has not pleaded estoppel in this case and has, therefore, waived the defense of estoppel; if Defendant's plea of election is intended as a plea of estoppel, the plea fails because no income will escape taxation if Plaintiff is permitted to change its method of accounting for the income of the Trust for 1928. The true basis for an estoppel from changing from one method to another of reporting income is that by the change some income will escape tax.

V.

The closed or completed basis of computing income for Trust No. P. T. 46 for 1928, especially where the contracts are treated as being worth their face value, did not correctly reflect the income of the Trust. The installment basis of accounting did correctly reflect the income of the Trust.

If there is any theory of election tending to prevent the beneficiary from changing the method of reporting the income of the Trust, the extenuating circumstances are such that Plaintiff will be relieved or excused from the force of the election.

VI.

Plaintiff is permitted to exclude from its return for 1928, the amount reported by it as being the income of Trust No. P. T. 46, and to include in such return the income or loss of Trust No. P. T. 46, computed on the installment basis.

VII.

Trust No. P. T. 46, for the year 1928, sustained, on the installment basis, either a loss or an income less than the loss of Plaintiff, exclusive of any income or loss from Trust No. P. T. 46.

VIII.

Plaintiff, if Trust No. P. T. 46 is a Trust, is entitled to a refund of 1928 income taxes in the amount of $9,669.89.

IX.

That Trust No. P. T. 46, for the year 1928, together with its beneficiary, its Trustee, its sales force, and its lien holder, constituted a body of persons acting together without a charter but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise for profit, and was actually engaged in doing business in 1928 and constituted an association taxable as a corporation.

X.

That Trust No. P. T. 46 should have filed a Federal corporate income tax return; that such return should have been a single and separate return from the Federal corporate return filed by Plaintiff, as the affiliated group, which included Plaintiff, this association, and Pacific National Building Corporation, filed separate returns for 1928.

XI.

By virtue of the fact that Trust No. P. T. 46 was an association for 1928 and should have filed a separate corporate income tax return for that year, Plaintiff is entitled to a refund of $9,669.89.

XII.

That the Defendant erroneously collected a tax of $9,669.89 from the Plaintiff, and that the Plaintiff is entitled to recover the sum of $9,669.89, plus interest at 6 per cent per annum from March 14, 1929, on $2,690.30; from June 12, 1929, on $2,690.30; from September 11, 1929, on $2,690.34; and from December 12, 1929, on $1,598.95; together with Plaintiff's costs of suit; that judgment be entered accordingly.

.....

United States District Judge.

Approved as to form according to Rule 44.

PIERSON M. HALL
United States Attorney

By.....
Eugene Harpole
Assistant United States Attorney.

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COMPANY, a corporation, Plaintiff, vs. GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, Defendant.	)))))))	At Law No. 5827-M STIPULATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE BILL OF EXCEPTIONS

IT IS HEREBY STIPULATED, by and between the respective parties hereto, through their respective counsel, that the time for filing the Bill of Exceptions may, with the approval of the Court, be extended thirty (30) days from and after April 15, 1935.

DATED: April 15, 1935.

MELVIN D. WILSON
Melvin D. Wilson
Attorney for Plaintiff.

PEIRSON M. HALL
Peirson M. Hall,
U. S. Attorney

M. D. GALLAHER
M. D. Gallaher,
Asst. U. S. Attorney

EUGENE HARPOLE
Eugene Harpole,
Special Attorney, Bureau of Internal Revenue

Attorneys for Defendant.

ORDER EXTENDING TIME WITHIN WHICH PLAINTIFF MAY FILE BILL OF EXCEPTIONS

In accordance with the foregoing Stipulation, it is hereby ordered that the Plaintiff may have thirty (30) days from and after April 15, 1935, in which to file its proposed Bill of Exceptions.

DATED: April 15, 1935.

Paul J. McCormick
United States District Judge.

STIPULATION RE APPROVAL OF BILL OF EXCEPTIONS

It is hereby stipulated and agreed by and between attorneys for Plaintiff and Defendant that the foregoing Bill of Exceptions has been presented in time and that it may be approved, allowed and settled by the Judge in the above entitled Court as correct in all respects.

DATED: April 29, 1935.

Melvin D. Wilson
Melvin D. Wilson
Attorney for Plaintiff.

Peirson M. Hall – E. H
Peirson M. Hall,
U. S. Attorney

By Hugh Dickson – E. H.
Hugh Dickson,
Asst. U. S. Attorney

By Eugene Harpole
Eugene Harpole,
Special Attorney for the
Bureau of Internal Revenue.

Attorneys for Defendant.

ORDER APPROVING AND SETTLING BILL OF EXCEPTIONS

The foregoing Bill of Exceptions duly proposed and agreed upon by counsel for the respective parties is correct in all respects and is hereby approved, allowed and settled and made a part of the record herein, and said Bill of Exceptions may be used by the parties, Plaintiff or Defendant, upon any appeal taken by either parties, Plaintiff or Defendant.

DATED: May 2nd, 1935.

Paul J. McCormick
United States District Judge.

[Endorsed]: Received copy of the within Bill of Exceptions this 1st day of May, 1935 Peirson M. Hall – E. H. U. S. Attorney, Eugene Harpole, Attorneys for Defendant. Filed May 2 - 1935 R. S. Zimmerman Clerk By B. B. Hansen, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL

TO the Honorable Judge of the United States District Court, In and for the Southern District of California, Central Division.

The above-named Plaintiff, feeling aggrieved by the decree rendered and entered in the above-entitled cause on the 5th day of April, 1935, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and Plaintiff prays that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of such Court in such cases made and provided.

And your Petitioner further prays that the proper order relating to the required security to be required of Plaintiff be made.

Melvin D. Wilson
Melvin D. Wilson
Counsel for Plaintiff.

[Endorsed]: Received copy of the within Petition for Appeal this 1st day of May, 1935 Peirson M. Hall, E. H., U. S. Attorney Eugene Harpole, Attorneys for Defendant. Filed May 23, 1935, R. S. Zimmerman, Clerk by L. Wayne Thomas Deputy Clerk

IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

PACIFIC NATIONAL COMPANY, a corporation, Plaintiff, vs. GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, Defendant.	At Law No. 5827-M ASSIGNMENT OF ERRORS

Now comes the Plaintiff in the above-entitled case, and files the following assignment of errors upon which Plaintiff will rely upon its prosecution of the appeal in the above-entitled cause from the decree made by this Honorable Court on the 5th day of April, 1935.

1. The Court erred in its decree in that the evidence is not sufficient to support the special findings.

2. The Court erred in refusing the special findings requested by the Plaintiff.

3. The Court erred in allowing the special findings requested by the Defendant.

4. The Court erred in rendering judgment for Defendant on the facts found.

5. The Court erred in failing to find that the Trustee of Trust No. P. T. 46 filed a fiduciary income tax return for 1927 and 1928 on the installment basis, and that

such return was an election by the Trustee of the installment basis for reporting income for 1928.

6. The Court erred, as a matter of law, in finding that there is any election, in the law or regulations, with respect to the installment or closed basis of reporting sales of real estate.

7. The Court erred, as a matter of law, in failing to find that the election, if any, is on the vendor of real property, and that Plaintiff was not the vendor of real property, and hence there was no election made by Plaintiff.

8. The Court erred, as a matter of law, in failing to find that the Trust, No. P. T. 46, was an entity separate and distinct from Plaintiff, and was the owner and vendor of the land whose sales are involved in this cause.

9. The Court erred in finding that Plaintiff obtained and retained financial benefit and income from the sales of real estate made by Frank J. Brick.

10. The Court erred, as a matter of law, in finding that Plaintiff filed a return for 1928 that met the requirements of law and regulations.

11. The Court erred, as a matter of law, in failing to find that Plaintiff erred in keeping, on its books, a record of the transactions of Trust No. P. T. 46.

12. The Court erred, as a matter of law, in failing to find that the Trustee of a trust is the only person authorized by law to keep its records, choose its method of accounting, choose its method of filing income tax reports, and determine its net income.

13. The Court erred as a matter of law, in failing to find that the Plaintiff could not lawfully include in its return any item as representing the income or loss of the Trust until the Trustee had chosen the method of accounting and reporting, and had computed the income on the method chosen.

14. The Court erred as a matter of law in finding that Plaintiff exercised an election in reporting the income of Trust No. P. T. 46 on the deferred payment plan rather than on the installment plan, which election became final and binding on March 15, 1929.

15. The Court erred, as a matter of law, in failing to find that the basis for a binding election is that the taxpayer is estopped from changing its method of computing income on the ground that some income may escape tax by the operation of the statute of limitations.

16. The Court erred as a matter of law in failing to find that there is no estoppel in the case at bar, as no income would escape tax if Plaintiff were permitted to change from the deferred payment to the installment plan.

17. The Court erred, as a matter of law, in failing to find that before an election can be binding, there must be two inconsistent courses of procedure, that one must have a knowledge of the two inconsistent courses, have knowledge that an election must be made, and make a deliberate choice, with the facts and the law in mind, of one of the inconsistent courses.

18. The Court erred, as a matter of law, in failing to find that Plaintiff, in preparing and filing its 1928 return, lacked any knowledge of the right to file on the installment basis, of the right to report the sales contracts at their fair market values instead of their face values, of the duty to elect one of the procedures, or of the fact that if one method was chosen, this constituted a binding election.

19. The Court erred as a matter of law in failing to find that the installment plan of reporting the income of Trust No. P. T. 46 would correctly reflect the net income of the Trust, or of Plaintiff.

20. The Court erred as a matter of law in failing to find that when the successor Trustee of Trust No. P. T. 46 filed a fiduciary return on the installment basis, this action repudiated and rendered negatory any return or calculation of income made by Plaintiff for the Trust.

21. If the Court was correct in its conclusion that Plaintiff made an election to use the closed or completed method of reporting sales of real estate, then the Court erred as a matter of law in failing to find that there were extenuating circumstances present which should relieve Plaintiff from the binding effect of the election.

22. The Court erred in failing to find that any one or more of the following extenuating circumstances were sufficient to relieve Plaintiff from its election, if any, to report real estate sales on the completed or closed basis.

(a) That Plaintiff did not receive any money from the Trust in 1928, or at any time.

(b) That Plaintiff lost around $600,000 cash in the Trust.

(c) That the Trust, on the installment basis, either had a loss in 1928 or an income insufficient to overcome Plaintiff's loss from other operations.

(d) That Plaintiff was not to receive any money from the Trustee until all costs and expenses had been paid, and these items were never paid.

(e) That Plaintiff could not determine whether it would realize a gain or a loss on the Trust until the entire Trust property had been sold and the Trust property was not all sold by the end of 1928.

(f) That the contracts for the sale of lots were treated as having a fair market value equivalent to their face value, whereas, their fair market value was not over one-half of their face value.

(g) That by the end of 1928 forty per cent of the contracts for the sale of lots were delinquent in interest, or taxes, or principal, or two or more of these items.

(h) That many lot buyers defaulted in the purchase contracts.

(i) That the lots were sold for two or three times their real value by the use of high pressure salesmanship, free lunches and lectures, and very high commissions.

(j) That the closed or completed basis of reporting the income from the sales of real estate did not correctly reflect the net income of the Trust or of Plaintiff.

23. The Court erred, as a matter of law, in failing to find that Trust No. P. T. 46 was, in 1928, an association taxable as a corporation, and should have filed a separate corporation income tax return whose income should be excluded from Plaintiff's return.

24. The Court erred, as a matter of law, in finding that Trust No. P. T. 46, was a fixed Trust in the nature of a mortgage, and a security device, and not an association taxable as a corporation.

25. The Court erred, as a matter of law, in rendering judgment for the Defendant.

WHEREFORE, The Appellant prays that said decree be reversed and that said United States District Court for the Southern District of California, Central Division, be ordered to enter a decree reversing the decision in said cause.

Melvin D. Wilson

Melvin D. Wilson

Attorney for Plaintiff and Appellant.

[Endorsed]: Received copy of the within Assignment of Errors this 1st day of May, 1935 Peirson M. Hall— E. H. U.-S. Attorney Eugene Harpole Attorneys for Defendant. Filed May 23, 1935 R. S. Zimmerman Clerk. By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL

Upon reading the Petition for Appeal of the Plaintiff and Appellant, IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals for the Ninth Circuit, from the decree heretofore filed and entered herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the said Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond on appeal to be filed by Plaintiff be fixed at the sum of $250.00 and the same act as a bond for cost on appeal.

DATED: May 23rd, 1935.

Paul J. McCormick
Judge

[Endorsed]: Received copy of the within Order Allowing Appeal this 1st day of May, 1935. Peirson M. Hall—E. H. U. S. Attorney Eugene Harpole, Attorneys for Defendant. Filed May 23, 1935 R. S. Zimmerman, Clerk. by Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

BOND TO COVER COSTS ON APPEAL

KNOW ALL MEN BY THESE PRESENTS: That the PACIFIC NATIONAL COMPANY, the Plaintiff herein, as principal, is held and firmly bound unto GALEN H. WELCH, Former Collector of Internal Revenue for the Sixth District of California, his executors, administrators and assigns, in the sum of Two Hundred and Fifty Dollars ($250.00), to which payment well and truly to be made, PACIFIC NATIONAL COMPANY binds itself, its successors and assigns, jointly and severally, by these presents.

Signed, sealed and dated this 21 day of May, 1935.

WHEREAS, on the 5th day of April, 1935, the above named Court rendered a judgment against the PACIFIC NATIONAL COMPANY and the PACIFIC NATIONAL COMPANY having obtained from said District Court an order allowing it to take an appeal from said Judgment to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the said decision, and having issued a citation directed to the said GALEN H. WELCH, citing and admonishing him to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California.

NOW, THEREFORE, the condition of this obligation is such that if the said PACIFIC NATIONAL COMPANY shall prosecute its appeal to effect, and answer all costs and damages occasioned thereby, if it fails to make its plea good, then the above obligation shall be void, otherwise to remain in full force and effect.

PACIFIC NATIONAL COMPANY

BY HARRY KAHAN

(SEAL) Vice-President

By E. C. MAEDER

Secretary

STATE OF CALIFORNIA)
) ss.
County of Los Angeles)

On this 21st day of May, 1935, before me, Mary McWaters, a Notary Public in and for the said County and State, personally appeared HARRY KAHAN and E. C. MAEDER, known to me to be the Vice President and Secretary respectively of PACIFIC NATIONAL COMPANY, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument, on behalf of the PACIFIC NATIONAL COMPANY, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] MARY McWATERS

Notary Public in and for the County of Los Angeles, State of Califonia.

My Commission Expires Dec. 1, 1938

Taken and approved by me this 23rd day of May, 1935.

Paul J. McCormick

Judge.

[Endorsed]: Filed May 23, 1935 R. S. Zimmerman, Clerk. by Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

AMENDED PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court, in and for the Southern District of California, Central Division:

Please issue a certified transcript of record in the above-entitled case on appeal to the Circuit Court of Appeals for the Ninth Circuit, consisting of the following:

1. Amended Bill of Complaint.
2. Answer to Amended Bill of Complaint.
3. Stipulation Waiving Trial by Jury.
4. Special Findings as allowed by Court.
5. Minute Order.
6. The Judgment.
7. Engrossed Bill of Exceptions.
8. Petition for Appeal.
9. Assignment of Errors.
10. Order Allowing Appeal, and Order fixing cost bond.
11. Cost Bond.
12. Citation on Appeal.
13. Stipulation to Minimize Printed Record on Appeal, approved July 30, 1935.
14. Amended Praecipe.

Melvin D. Wilson
Melvin D. Wilson
Counsel for Plaintiff.

[Endorsed]: Received copy of the within Amended Praecipe this 13th day of November, 1936 Eugene Harpole, attorney for defendant. Filed Nov 16 1936 R. S. Zimmerman, Clerk By R. F. Swinney Deputy Clerk.

[Title of Court and Cause.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 192 pages, numbered from 1 to 192 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; amended complaint; answer; stipulation waiving jury; findings of fact and conclusions of law; order of March 8, 1935; judgment; stipulation to minimize printed record on appeal; bill of exceptions; petition for appeal; assignment of errors; order allowing appeal; bond on appeal, and amended praecipe.

I do further certify that the amount paid for printing the foregoing record on appeal is $270.35 and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to $29.65 and that said amount has been paid me by the appellant herein.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this 25th day of November, in the year of Our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

[Seal] R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By EDMUND L. SMITH,
Deputy.

[Endorsed]: Printed Transcript of Record. Filed Nov. 27, 1936. Paul P. O'Brien, Clerk.

No. 8394

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

PACIFIC NATIONAL COMPANY,

Appellant,

vs.

GALEN H. WELCH, etc.,

Appellee.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Thursday, April 15, 1937.

Before: Wilbur, Garrecht and Haney, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION.

Ordered appeal in above cause argued by Mr. Melvin D. Wilson, counsel for appellant, and by Mr. Lester L. Gibson, Special Assistant to the Attorney General, counsel for appellee, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals for the Ninth Circuit.

Excerpt from Proceedings of Monday, August 2, 1937.

Before: Garrecht and Denman, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the court, ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Court and Cause.]

OPINION.

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before: Wilbur, Garrecht and Haney, Circuit Judges.

Garrecht, Circuit Judge:

This is an appeal from a judgment of the District Court in favor of defendant in an action brought by appellant herein for refund of income taxes for the calendar year 1928. Trial was had to the court upon stipulation waiving jury; no opinion was handed down, but the court made special findings of fact and conclusions of law and judgment was entered accordingly.

The assignments of error are numerous; in our judgment but two questions were raised on appeal: (1) Whether a taxpayer, having filed its income tax return reporting sales contracts for parcels of real estate sold as completed transactions and treating the sales price as having been received, may change its method and later amend the return and report such sales on the installment basis and demand a refund of taxes paid, or is it bound by its choice made in its original return; and (2) if it be held that the taxpayer is bound by its original return, whether the Trust which held the property and to which appellant was the sole beneficiary, was taxable as an association and, therefore, the return

filed by the appellant for the year 1928 was not a proper one in that it should not have included the income of the trust.

The second point, since the argument in this case, has been decided adversely to appellant's contention by the Supreme Court in A. A. Lewis & Company, etc., et al., v. Commissioner of Internal Revenue, 300 U. S. ....., 81 L. Ed. 748.

Some time prior to 1928 the appellant purchased a tract of land in Culver City, County of Los Angeles, California, paying part of the purchase price in cash and giving its promissory notes for the balance. This property was conveyed to the Pacific National Bank in trust as Trustee for Trust No. P. T. 46, and under the Trust Indenture the plaintiff became the sole beneficiary of said trust. The tract was subdivided, streets laid out, etc. Contracts were entered into with selling agents, prices fixed and sales proceeded with. Most of the lots were sold on contract, 25% down and the balance over a period of time.

The appellant was a holding and investment company, originally incorporated with a capital stock of $2,000,000, which was increased in 1928 to $4,000,000. In 1928 it owned over 80 per cent of the stock of Pacific National Bank, as well as over 95 per cent of the stock of Pacific National Building Corporation. This latter corporation and appellant filed separate corporation income tax returns for 1928. The officers of the appellant were officers of the Pacific National Bank.

The trust indenture, Trust No. P. T. 46, was a

security transaction or device, containing recitals that four promissory notes had been made by appellant in favor of one H. W. McLeod for the total sum of $300,000, each note bearing the words, "This note is secured by a certain declaration of trust issued by The Pacific National Bank of Los Angles, * * * dated July 1st, 1927, and known as Trust P. T. 46 and is subject to the terms and conditions thereof." It was further provided in the trust indenture that "The entire sales price of every lot or parcel of said Trust Property, together with all interest on each contract of sale shall be paid to the Trustee [Pacific National Bank]." All contracts of sale, or deeds covering any part of the trust property were to be executed by the trustee.

In the 1928 Federal Income Tax Return the appellant reported an income of $89,677.34, and this income was made up as follows:

Income from Trust No. P. T. 46		$137,007.17
Less:		
Loss of Taxpayer from its 1928 operations exclusive of the trust income	$11,480.37	
Statutory net losses as follows		
1925	1,990.77	
1926	9,708.66	
1927	24,150.03	47,329.83
Net income as reported		$89,677.34

The tax was paid in quarterly installments.

The $137,007.17 representing the income of Trust P.T. 46, Pacific National Bank, Trustee, resulted from the sale of subdivision lots, and in the determination thereof said sales were treated as deferred payment sales not on the installment plan and the obligations of the purchaser were treated as having a fair market value equivalent to their face value.

On February 26, 1931, the appellant filed a claim for refund of the tax paid of $10,761.28 upon the ground that "Profit from sales of real estate in a subdivision trust were erroneously reported as based on closed sales, although the sales were made on the installment basis and proceeds of sales and collections were allocated by the trustee." An amended claim was filed on April 4, 1932, for refund of said tax, upon the ground that "Claimant now wishes to amend the claim by showing that the subdivision trust is a separate entity, an association taxable as a corporation, that it did not file a consolidated return with claimant in 1928, and that its 1928 income can not be included in claimant's income or return. Accordingly, the income of the subdivision must be excluded from claimant's 1928 income, and the tax paid thereon by claimant, refunded. This situation prevents the doctrine of estoppel from applying to this case." The trustee did not file a fiduciary or other income tax return for the years 1927 or 1928.

On or about May 17, 1932, the Commissioner of Internal Revenue rejected that portion of appellant's claim for refund which pertained to the

grounds set forth in this suit. The Commissioner allowed appellant's claim for refund in the amount of $1,091.39, together with interest thereon, based on other grounds not material here. Thereafter the appellant filed the instant suit.

At the trial, F. W. Shelton, who was secretary of the appellant corporation in 1928, testified that in computing the income of the trust for 1928 he treated the sales contracts as being the equivalent of cash. He said he did not know that the 1928 Revenue Act permitted sales to be reported on the installment basis when 25% of the selling price was received in the year of sale; that he understood that the sale had to be treated as a cash or completed sale; that he did not know that sales were permitted to be reported at their fair market value; that he did not know that where the down payment exceeded 40% of the selling price the law permitted the collections to be treated as return of capital until the cost had all been collected, and to then treat the subsequent collections as all income; that he prepared the 1926 and 1927 income tax returns; that he knew that the returns should be prepared on the basis of the method used in keeping books of the reporting company; that he had no consultant advise in the preparation of that return. He further testified that there was a gross profit in the Trust of $306,181.69 for the year 1928, with commissions paid of $182,711.49, and expense on the "Speedway" property of $4,044.56, and that in calculating the income of the trust for 1928 he included the sales that were made in 1927. The trustee kept books of the activities of Trust No. P. T. 46

and furnished the witness with the figures for his ledger. He made the 1928 return entirely from the books of the appellant.

It was shown by this witness' testimony that there had been an assignment of many assets of the appellant to the Transamerica Corporation, but that this claim for refund was expressly excluded from the assignment; that the Guaranty Trust Company later became trustee for the trust here involved.

William H. Elwell, a witness for appellant, testified that he was engaged in the real estate business and had been contacted by an official of the Pacific National Bank to make an estimate of what Culver City Park [Trust No. P.T. 46] could be sold for; that he prepared a map and set prices on the individual lots, so as to exceed the amount of money the bank desired to receive from the sale of the tract; that he had sign boards painted and partly organized a sales force. He was then informed that certain property included in the map was not for sale and that it was desired to obtain the same amount of money from the smaller area. He attempted to sell the lots at the higher figure, but did not care about going on with the contract. A Mr. Frank Brick then took over the sales contract. The witness said that Brick was reported to have used "high pressure closers"; that Brick gave free lunches and had lectures delivered to prospective lot buyers; that, in his opinion, the lecturers were not always truthful; that the lots were sold for prices two or three times higher than the prices he thought they would sell for. He further testified that he did not think the contracts with the buyers were worth their

face value; that he thought the fair market value was one-third to one-half of the selling prices, reduced by the cash down payments.

Mr. Harry Kahan, a certified public accountant, had audited the books of appellant in 1930 and prepared the claim for refund filed February 26, 1931. He testified that the books of appellant were kept strictly on a cash basis; that he prepared from the records of the trustee, a summary of the condition of the contracts for sale of lots of the trust as of December, 1928. This summary was offered and received in evidence as Exhibit No. 9, over objection and exception of defendant-appellee. Another summary prepared by the witness was offered and received in evidence as Exhibit No. 10, also over objection and exception. Exhibit No. 9 indicated that 60 per cent in number, 62 per cent in amount, of the sale accounts were paying accounts; and that 40 per cent, and 38 per cent, of these accounts were delinquent, respectively. It also indicated that 6 3/5 per cent of the accounts (in amount) had been cancelled and 7 4/5 per cent had been paid in cash. Exhibit No. 10 demonstrated that the commission on sales in 1927 was 31.38 per cent and in 1928, 32.72 per cent, of the selling price, and that the ratio of profit to selling price in these years was 14.68 per cent and 14.26 per cent, respectively.

Copies of fiduciary income tax returns for Trust No. P.T. 46 for the years 1927 and 1928, filed on January 3, 1935, were offered in evidence and objected to by counsel for the defendant. The objection was overruled, exception noted and the docu-

ments marked Exhibit No. 11. It appeared, from this exhibit, that there was a net income in the trust for the year 1927 of $4,821.43, and for the year 1928 of $14,073.46.

During the progress of the trial a verbal stipulation was entered into, as follows: "May it please the Court, the defense is agreeable to a stipulation to the effect that should the court decide either that the plaintiff is entitled to change its method of computing income from the completed sale basis to the installment or deferred payment sale basis, or it should be decided that the trust should have reported the income on the basis of an association taxable as a corporation, and should have filed a separate return as a corporation instead of as a trust, that there would be some amount of refund due. They have reserved the right to endeavor to compute that without taking time now. * * * * And further, that if a change of basis was granted, that no income would escape taxation in subsequent years by reason of the Statute of limitations; I do not wish the stipulation to be taken as abandoning our contentions as to the right to change the basis."

In support of its first proposition the appellant argues that its "action in including in its return the income of the trust computed on the completed sale basis constitutes a mistake and not an election".

The taxpayer reported the sales as deferred payment sales, just as they were reflected upon its books. It indicated by its original Income Tax Return for the year 1928 that it chose to report the sales as completed transactions, rather than as installment con-

tracts. By filing its return on that basis it made a choice or election and it may not, at a latter date, when it appears to its advantage to do so, change the method of making its report. Rose, etc., v. Grant (CCA 5), 39 F. (2d) 340, 341; Safety Electric Prod. Co., Inc. v. Helvering, etc. (CCA 9), 70 F. (2d) 439, 441; Alameda Inv. Co. v. McLaughlin (CCA 9), 33 F. (2d) 120; U.S. v. Pettigrew (CCA 9), 81 F. (2d) 666. "The courts have uniformly held that the right of choice or election to file one or another sort of return is exercised by filing the return." Radiant Glass Co. v. Burnet, etc. (Ct. Ap. D.C.), 54 F. (2d) 718, 719. "The present case is not different in principle from those in which a taxpayer, having the right to file either one or two different sorts of returns, makes his choice and files his returns accordingly. It is settled that he cannot afterwards change. Radiant Glass Co. v. Burnet, * * * [supra]. *This is so even where the taxpayer, under a mistake of law, was unaware that he had the right to choose.* Buttolph v. Commissioner, 29 F. (2d) 695 (CCA 7)." Moran v. Commissioner of Internal Revenue (CCA 1), 67 F.(2d) 601. (Italics our own.)

The proposition that "the trust is an association whose income should not have been included in appellant's return but should be reported in a separate return", as indicated above, has been disposed of by the ruling of the Supreme Court in A. A. Lewis & Company, etc., et al., v. Commissioner of Internal Revenue, supra, and requires no further discussion.

The findings of the trial court are supported by substantial evidence and are sufficient to sustain the judgment.

The judgment of the District Court is affirmed.

[Endorsed]: Opinion. Filed Aug. 2, 1937. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit

No. 8394

PACIFIC NATIONAL COMPANY,

Appellant,

vs.

GALEN H. WELCH, etc.,

Appellee.

JUDGMENT.

Upon appeal from the District Court of the United States for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Aug. 2, 1937. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITD STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred seven (207) pages, numbered from and including 1 to and including 207, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of September, A. D. 1937.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 6, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.